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No. **1127**

## SUPREME COURT OF THE UNITED STATES

October Term, 1946

DIMAS YGNACIO YBARRA AMAYA, JUAN  
ANGEL YBARRA AMAYA, MARIA TERESA DE  
JESUS YBARRA AMAYA, JUANA TAMES Y  
SANTOS, A WIDOW, AND MARIA DEL REFU-  
GIO AMAYA DE YBARRA, A WIDOW,

Petitioners

v.

STANOLIND OIL AND GAS COMPANY, A COR-  
PORATION, R. A. PARR, MARGARET LILLIAN  
PARR HILLARD AND HER HUSBAND, VER-  
NON HILLARD, AND SINCLAIR REFINING  
COMPANY, A CORPORATION,

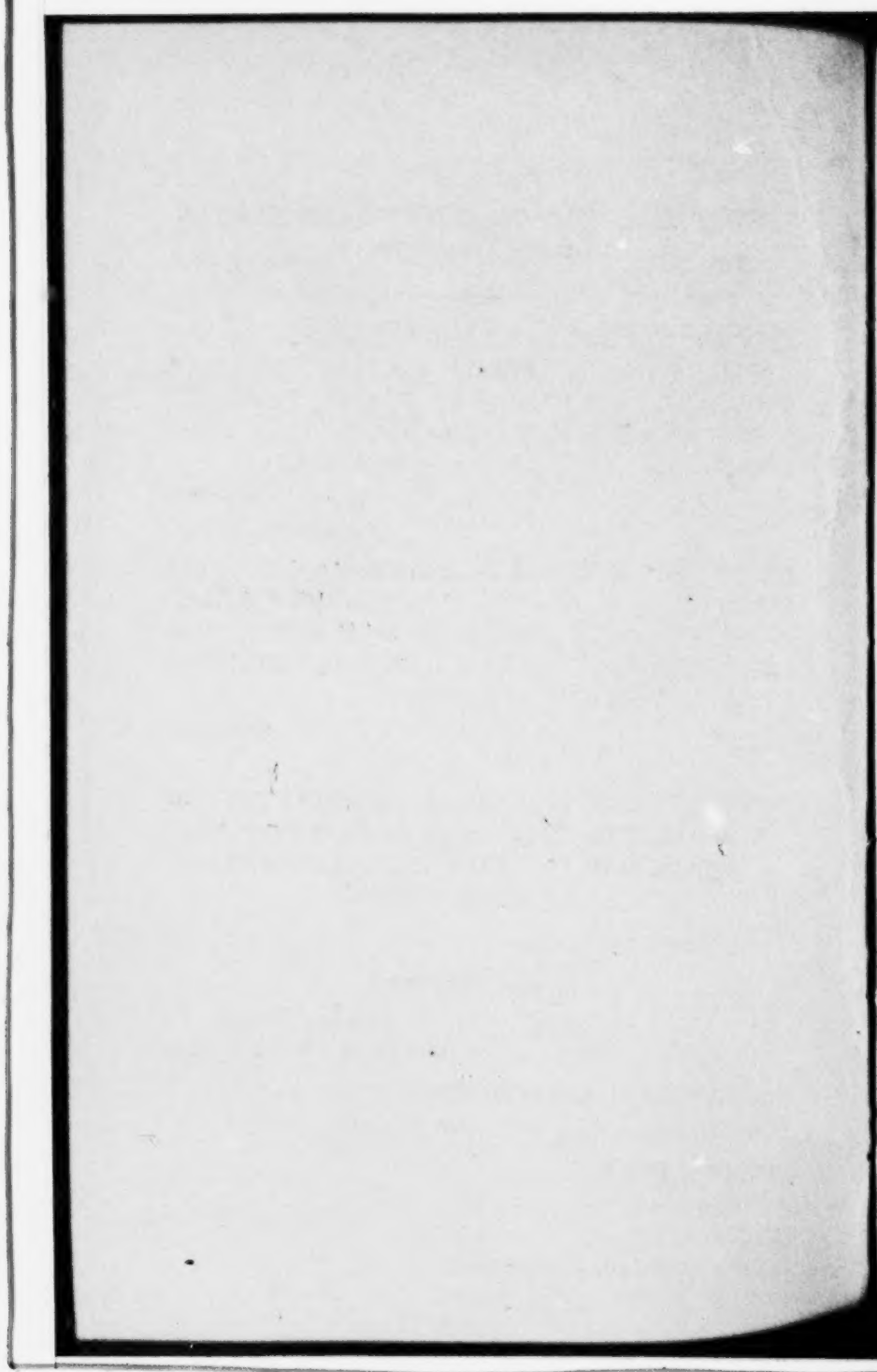
Respondents

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF AP- PEALS FOR THE FIFTH CIRCUIT AND SUPPORTING BRIEF

D. B. CHAPIN,  
P. O. Box 256, Mission, Texas  
Attorney for Petitioners

ELLERY GARLAND BROWN,  
Jones Building, Corpus Christi, Texas

LEWIS B. PERKINS,  
203 Maryland Avenue, N. E.  
Washington, D. C.  
Of Counsel for Petitioners.



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**THE SUPREME COURT OF THE UNITED  
STATES**

**October Term, 1946**

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**DIMAS YGNACIO YBARRA AMAYA, ET AL**  
Petitioners,

vs.

**STANOLIND OIL AND GAS COMPANY, ET AL**  
Respondents

---

**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF AP-  
PEALS FOR THE FIFTH CIRCUIT  
AND SUPPORTING BRIEF**

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**To the Honorable the Supreme Court of the  
United States:**

Your petitioners respectfully files and submits this as their petition for a writ of certiorari to review a decision and judgment of the United States Circuit Court of Appeals, handed down December 27, 1946, affirming a decision and judgment of the United States District Court for the Southern District of Texas, in favor of Respondents and against petitioners (62 Fed. Supp. 181), wherein said district court held (1) that the treaty of Guadalupe Hidalgo, entered into between Mexico and the United States, concluded February 2, 1848, had no application to Texas, and (2) that even if such treaty did apply to Texas, the stipulations contained in the last clause of Article VIII of said treaty, merely placed the class of Mexicans therein mentioned on an equal footing with citizens of Texas. (R. 215).

Motion for rehearing was filed (R. 223) and was denied on January 21, 1947. (R. 239).

### **Pivotal Questions Presented**

A. Whether or not, the lands situated in that part of the present State of Texas, lying between the Nueces river and Rio Grande, and held under grants from Spain or Tamaulipas, Mexico, are within the protection of the stipulations of the treaty of Guadalupe Hidalgo, entered into between the United States and Mexico, concluded February 2, 1848. (9 U. S. Stat. at Large, 922, et-seq.)

B. Whether or not, the stipulations contained in the last clause of Article VIII of the said treaty of Guadalupe Hidalgo, reading: "In said territories, property of every kind, now belonging to Mexicans, not established there, shall be inviolably respected. The present owners, the heirs of these and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it, guaranties equally ample as if same belonged to citizens of the United States," render inoperative Texas' statutes of limitations as against petitioners.

### **Summary Statement of Matters Involved**

This is a civil action brought by petitioners, who are Mexicans, natives, subjects and citizens of Mexico against the Respondents to recover possession of an undivided interest in a certain segregated tract of land situated in Nueces County, Texas, and forming a part of a larger grant of land situated between the Nueces river and Rio Grande, and originally granted by Spain, when it was sovereign, to its citizens who, in 1811 sold and conveyed said grant of land to one Pedro Ygnacio

Garcia, who was petitioners' remote ancestor and through whom they claim title to such interest, and for damages occasioned by the removal of minerals from said land. (R.2).

### **Pertinent Allegations.**

Plaintiffs, in substance, alleged:

That the boundary of the Republic of Texas extended to the Nueces river (R. 9, par. 22), and it exercised no jurisdiction over the territory lying between the Nueces river and Rio Grande, (except at Corpus Christi, and Tamaulipas exercised jurisdiction over all said state, except as above (R. II, par 24), until General Taylor took actual possession thereof (R. II, par. 27). That under the Articles of Annexation, only that part of the Republic of Texas, "properly included within and rightfully belonging to said Republic," was admitted into the Union (R. II, par. 25). That at time of the treaty, all lands in said territory which had passed into private ownership was owned by Mexicans of two classes, those "established there" and those "not established there." (R. 12, par. 28). That the war with Mexico was terminated by said treaty, wherein Mexico ceded said territory to the United States (R. 12, par. 29). That under the law of nations, the municipal laws of Mexico were continued in force as to the inhabitants of said ceded territory (R. 12, par. 30). That Article IX of said treaty as originally drawn, stipulated that the inhabitants of said ceded territory,— "shall be maintained and protected in the enjoyment of their liberty, their property, and the civil rights now vested in them, according to the Mexican laws," (R. 12, par. 32; R. 13 & 14). That the United States Senate struck out said Article IX and in lieu thereof inserted the present Arti-

cle IX of said treaty, and advised the Mexican Government, by protocol and letter, that the change so made did not in any way alter the situation of the inhabitants, that "In consequence, all the privileges and guaranties—civil, political and religious—which would have been possessed by the inhabitants of the ceded territories if the ninth article of the treaty had been retained will be enjoyed by them without any difference under the article which has been substituted." (R. 16, pars. 33, 34.)

That by the last stipulation of said Article VIII, the parties intended to and did continue in force the municipal laws of Mexico, as they existed when said treaty was concluded, as to all Mexicans owning property in said ceded territories and who were not established there (R. 17, par. 36). That under the laws of Republic of Texas, State of Texas and Republic of Mexico, an alien could not inherit from an alien or a citizen (R. 18, par. 38). That Mexico had no limitation statutes as applied to land, but applied the Spanish law of prescription, under which neither a trespasser nor a joint tenant could prescribe (R. 18, par. 39) The Court judicially knows the laws of a former sovereign (R. 17, par. 37). That the United States ceded said territory between the Nueces river and Rio Grande to Texas, September 9, 1850, subject, of course, to said stipulations (R. 18, par. 40). That neither plaintiffs nor any of their ancestors were "established" in said ceded territory since the conclusion of said treaty (R. 2, par. 2). That in virtue of said stipulation, no sort of prescription, limitations or laches operates against Plaintiffs (R. 22, par. 50).



### **Defendants Answered Generally.**

1. That the land in question is not "within territory previously belonging to Mexico" or "ceded territory" as contemplated by the treaty of Guadalupe Hidalgo.

2. That, assuming the treaty does apply, then, based on the second sentence in the above quoted part of Article VIII, there should not be any discrimination in favor of Mexican Citizens as against citizens of Texas or citizens of the United States, and that this suit is without merit.

3. That the land in question is subject to the laws of Texas, particularly with reference to the statutes of limitation of three, five, ten and twenty-five years, and Texas land laws applicable to abandonment of title and presumption of grant, under which laws defendants assert they have full and perfect title. (R. 125-126).

The case was submitted to the trial Court on Plaintiffs' motion for summary judgment (R. 76), and defendants' motions for summary judgment (R. 109, 117 and 118).

The Court rendered judgment for defendants and against plaintiffs, and in its opinion (R. 123, et-seq.), held:

That the territory in the present State of Texas between the Nueces river and Rio Grande was, by reason of the Declaration of Independence of March 2, 1836; the victory at San Jacinto; the treaties with Santa Ana and the Act of December 19, 1836, part of the Republic of Texas, and its successor the State of Texas,

and formed no part of Mexico at the time of the conclusion of the treaty of Guadalupe Hidalgo, and further stated in the Opinion (R. 151) that "Although this law suit could well be ended here, inasmuch as from the foregoing it is clearly apparent that the plaintiffs have no legal right to the relief they seek, however, due to the importance of the questions here involved, it is deemed proper to discuss the other points at issue in this controversy.

"Under point 2, the defendants say that if the treaty of Guadalupe Hidalgo is applicable to the facts of this case, then such treaty should not be construed in such manner as to:

"A. Operate as a discrimination in favor of citizens of Mexico, or

"B. Subject the land in question to the laws of Mexico, but on the contrary the maximum rights which terms the plaintiffs have a right to assert and claim are that they be on equal terms with citizens of Texas. Therefore, the land in question is subject to the laws of the Republic of Texas and its successor in sovereignty, the State of Texas."

The trial Court sustained defendants' contentions in toto (R. 187).

Plaintiffs filed their motion for rehearing (R. 189) and an amendment thereto (R. 196). The trial court overruled plaintiffs motion for rehearing without written opinion. (R. 198).

Plaintiffs appealed said case to the said Circuit Court of Appeals (R. 198) and filed their points on which they intended to rely (R. 199).



The Circuit Court of Appeals affirmed the judgment below on December 27, 1946, (R. 215), and among other things, held:

1.

"Whether the lands involved were ceded or conquered, they have been a part of the United States for at least one hundred years and a part of the State of Texas at least since the enactment of the Compromise Agreement of 1850. Whether by cession or conquest, they were split away from the Mexican nation so that there was a substitution of sovereignty under which all the laws theretofore in force which were in conflict with the political character and constitutional institutions of the substituted sovereignty lost their force. *Vilas v. Manila*, 220 U. S. 345; *Chicago Railway Company v. McGlin*, 114 U. S. 542. (R. 219).

2.

"Since we are of the opinion that Article VIII of the treaty does not prevent the passage by the State of Texas of reasonable and non-discriminatory statutes regulating the title and possession of land, \* \* \* there is no necessity for us to consider the question as to whether or not the lands between the Nueces and Rio Grande rivers were ceded by the treaty or were already under the jurisdiction, and within the domain, of the Republic of Texas, nor whether Texas acquired no jurisdiction over the land until after the passage of the Compromise Agreement between the United States and Texas, September 9, 1850. Certain it is that the lands in question are now within the boundaries of the State of Texas, and it is immaterial whether the lands were acquired by the surrender of Santa Ana or ceded by the treaty of Guadalupe Hidalgo, or whether, as was decided in *McKinney v. Saviego*, 18 How. 235; *Basse v. City of*

Brownsville, 154 U. S. 610; *State v. Bustamante*, 47 Tex. 320, they had been acquired by the Republic of Texas prior to the making of the treaty of Guadalupe Hidalgo. (R. 221).

3.

"We are convinced, however, as was the lower court, that there is nothing in the treaty that suggests that the property of Mexican citizens would not be subject to the valid, and nondiscriminatory, property laws of the State of Texas. The phrase "inviolably respected," even if singled out for construction, does not carry with it the significance urged by the plaintiffs. The phrase must be read in connection with the rest of the paragraph wherein the phrase is further explained by the statement that all, Mexicans, whether presently owning or subsequently acquiring, property, shall enjoy, with respect to it, guarantees equally ample as those of citizens of the United States. Even though we detach the phrase "properties of every kind, now belonging to Mexicans, not established there, shall be inviolably respected" and construe it separately, or unrelately to the last sentence, Plaintiffs would gain nothing thereby. Although much stress is laid by Plaintiffs upon the word "inviolably" is there a real substantial distinction between a statement that property belonging to Mexicans shall be "respected" and a statement that property belonging to Mexicans shall be "inviolably respected?" It would seem that titles that are "respected" would be as secure as those that were "inviolably respected." (R. 219).

In due course petitioners filed a motion for rehearing and challenged such decision (R. 223). Said court denied petitioners' motion for rehearing without opinion, January 21, 1947. (R. 239).

## Reasons Relied Upon for the Allowance of the Writ.

### 1.

This case presents questions of the first importance relating to the proper interpretation of the last clause of Article VIII of the treaty of Guadalupe Hidalgo, entered into between the United States and Mexico, February 2, 1848, which has not heretofore been passed upon by this Court. An early authoritative decision of this question by this Court is of pressing importance, not only to the parties to this cause, but also to the claimants of lands under Spanish or Mexican grants situated in the territory ceded by Mexico to the United States by said treaty.

The case was brought, and has proceeded to final judgment in the court below, with due regard to procedural and jurisdictional requirements. All essential questions of jurisdiction and procedure were fully explored in the tribunal of the first instance and there decided in favor of petitioners, and that the decision sought to be reviewed is based squarely upon the merits of the important issues presented. Those issues have been determined only after full trial upon all questions of fact, as well as after full argument upon all questions of fact and law; and full findings of fact and conclusions of law have been made by the court below as required by law. (R. 123 at 187).

### 2.

The holding of the trial court, sanctioned by the decision of the Circuit Court of Appeals that that part of the State of Texas, lying between the Nueces river and Rio Grande, was not ceded by Mexico to the United States of America is not in accord with the following authorities, namely:

State of Texas v. Balli, 190 S. W. (2) 71, certiorari denied by this Court in 90 L. ed. 1050;

Lerma v. Stephenson, 40 Fed. 356;

Gonzales v. Ross, 120 U. S. 605;

Clark v. Hiles, (Tex. Sup.) 2 S. W. 356

Tex-Mex. Ry. Co. v. Locke, 74 Tex. 370;

State v. Saenz, 47 Tex. 307;

State v. Gallardo, 106 Tex. 274;

State v. Russell, 85 S. W. 288, writ of error denied;

Baldwin v. Goldfrank, (Sup. Ct.) 30 S. W. 1064;

Act of 27th Legislature of Texas, approved September 5, 1901, at a Special Session, page 4, Chap. 4.

3.

The decision of the Circuit Court of Appeals that when Mexico ceded said territories to the United States, the laws of Mexico, in respect to land situated therein, were immediately abrogated, and the laws of Texas applied, is contrary to and in conflict with the express stipulation in respect thereto contained in Article IX of the treaty as originally drafted, and its amendment, the present Article IX, when read in connection with the American Government's explanation to the effect that the stipulations in said original article IX were not changed, but remained the same, and that the laws of Mexico were thereby continued in force as to the inhabitants thereof.

4.

The decision of the Circuit Court of Appeals that when Mexico ceded said territory to the United States of America, its laws affecting real estate situated in said

ceded territory, were immediately abrogated and were of no force, is in conflict with the decisions of this Court in *Vilas v. Manila*, 220 U. S. 345; *Chicago, etc. Ry. Co. v. McGlin*, 114 U. S. 542; *American Ins. Co. v. 356 Bales of Cotton*, 1 Pet. (U. S.) 511, 542, and many other decisions of this Court.

5.

The decision of the Circuit Court of Appeals that the first sentence of the last clause of Article VIII of said treaty, reading: "In said territories, property of every kind, now belonging to Mexicans, not established there, shall be inviolably respected," does not preserve the property rights of the class of Mexicans mentioned therein, under the laws of Mexico as they existed on the date of the conclusion of said treaty, is in conflict with the weight of authority.

6.

The decision of the Circuit Court of Appeals that the word "inviolably" as used in the first sentence of the last clause of Article VIII of said treaty, reading: "In said territories, property of every kind, now belonging to Mexicans, not established there, shall be inviolably respected," adds nothing to the meaning of said sentence, or expresses the intent of its framers, to preserve such property under existing law of Mexico, is in conflict with the Rules of Interpretation of treaties as established by this Court.

7.

The decision of the Circuit Court of Appeals that, "we are convinced, however, as was the lower Court, that there is nothing in the treaty that suggests that the property of Mexican citizens would not be subject to

the valid, and non-discriminatory property laws of the State of Texas," is in conflict with the established fact that the State of Texas had no jurisdiction over said territory at time of the conclusion of said treaty, and on the contrary acquired such jurisdiction in 1850 by the Compromise Act, and accepted same subject to the stipulation aforesaid.

8.

The decision of the Circuit Court of Appeals that there is no real or substantial distinction between a statement that property belonging to Mexicans shall be "respected" and a statement that property belonging to Mexicans shall be "inviolably respected," is erroneous in that said Court ignores the meaning of the word "inviolably" as used in the last clause of said Article VIII of the treaty.

9.

The language employed by the high contracting parties in the first sentence of the last clause of Article VIII of said treaty is plain and unambiguous, and needs no interpretation.

10.

The decision of the Circuit Court of Appeals that, "We regard the phrase (the last clause of Art. VIII) as a covenant on the part of the United States to respect from thence forth any title that Mexicans then had, or might thereafter acquire, to property within the region, but not that it would guarantee that those Mexicans would never lose their title to persons by foreclosure, sales under execution, trespasses, adverse possession, and other non-governmental acts" is in conflict with applicable decisions of this Court, particularly with the



case of *State of Texas v. Balli*, 90 L. ed. 1050 denying certiorari to the Supreme Court of Texas; and *Gonzales v. Ross*, 120 U. S. 605.

11.

The decision of the Circuit Court of Appeals that the second sentence of the last clause of Article VIII of the treaty, reading "The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it, guaranties equally ample as if same belonged to citizens of the United States," was not intended by its framers to, (1) avoid the effect of the maxim,— *Expressio unius est exclusio alterius* and enable the heirs of those present owners to take said lands by descent or purchase when otherwise they could not have done so; (2) Convert what was a defeasible estate into an indefeasible estate, and (3) Permit those Mexican owners to sell and convey their lands in said ceded territories to Mexicans, when otherwise they could not have done so, is clearly erroneous, and in conflict with the weight of authority.

12.

The decision of the Circuit Court of Appeals that to construe the meaning of the last clause of Article VIII of the treaty to preserve the property rights of the class of Mexicans mentioned therein in accordance with the laws of Mexico as they existed on date of conclusion of said treaty, would violate the Federal Constitution is not in accord with repeated decisions of this Court.

13.

The decision of the Circuit Court of Appeals that the stipulations of the last clause of Article VIII of the

treaty is inoperative against Texas' statutes of limitation, is equivalent to a taking of petitioners' property without due process of law and violative of the Federal Constitution.

14.

The decision of the Circuit Court of Appeals that the Federal Government had not the power to stipulate in said treaty that "the property of a non-resident alien (would) be free from statutes of limitation or state regulation while that of a citizen of the state where the lands are located should be subject to such statutes," is in conflict with this Court's holdings in *Hopkirk v. Bell*, 3 Cranch. (U. S.) 454; *Missouri v. Holland*, 252 U. S. 416, 434; *Baun v. Sauerwein*, 10 Wall. 218; *Orr v. Hodgson*, 4 Wheat. (U. S.) 453; *Huaenstein v. Lyndon*, 100 U. S. 483; *United States v. 43 Gallons of Whiskey*, 93 U. S. 198; *State of Texas v. Alberto Balli, et-al*, 90 L. ed. 1050, denying certiorari to the Supreme Court of Texas; 190 S. W. (2) 71; *Gonzales v. Ross*, 120 U. S. 605.

15.

Aside from the novelty and importance of the issue presented, the decision of the Appellate Court should be reviewed for the additional reason that it is clearly erroneous and not in accord with the principles of applicable decisions of this Court, particularly with the decision in the case of *Texas v. Balli*, Vol. 90 L. ed. 1050, in which this Court denied Texas' petition for a writ of Certiorari to the Supreme Court of Texas, in the same case (190 S. W. (2) 71) in which said Court had held that an ordination of Texas' Constitution which required claimants of lands under Spanish or Mexican grants located between the Nueces river and Rio Gran-



de to have their lands surveyed and file such field notes and a map thereof in the State Land Office by a certain date on penalty of forfeiture of title, was void.

16.

Inasmuch as the larger portion of the lands in the territory between the Nueces river and Rio Grande passed into private ownership by grants from Spain or Mexico, and the claimants thereof, in many instances rely exclusively on Texas' short term statutes of limitation as a bar to the recovery thereof by the rightful owners, the question of whether or not the last clause of Article VIII of said treaty protects the rights of the class of Mexicans mentioned therein against such limitation claims, is of tremendous importance to such claimants, not only in said part of Texas but also in all the states composed of territory ceded by Mexico to the United States by said treaty, and this question should be settled.

\* \* \* \*

In the interest of brevity (Rule 38, par. 2), petitioners do not at this time set forth all the points which will be urged at the argument on the merits of this case should the writ be granted, nor all of the contentions in support of such points; but, in order to comply with the Rule of this Court requiring that all issues upon which decision is requested be presented in the petition for certiorari (*Gunning v. Cooley*, 281 U. S. 90, 98), petitioners here refer to and incorporates into this petition all of the matters presented in their statement of Points on appeal (R. 199) in the Circuit Court of Appeals, with the same force and effect as if herein set out in full.

Wherefore, your petitioners, referring to the attached brief in support of the foregoing reasons for re-

view, respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case entitled on its docket: Dimas Ygnacio Ybarra Amaya, et-al vs. Stanolind Oil and Gas Company, et-al, and numbered 11,751, and that said judgment of the United States Circuit Court of Appeals for the Fifth Circuit may be reversed by this Honorable Court and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

And your petitioners will ever pray,

---

D. B. CHAPIN, Mission, Texas  
Attorney for Petitioners.

---

E. GARLAND BROWN,  
Corpus Christi, Texas

---

LEWIS B. PERKINS,  
Washington, D. C.  
Counsel for Petitioners.

## BRIEF

### 1.

#### The Opinion of the Court Below

The opinion of the Honorable Circuit Court of Appeals is reported in Vol. 158, Fed. (2)\_\_\_\_\_ and appears in the Record at Page 215 et-seq.

### 2.

#### Jurisdiction

1. The date of the judgment to be reviewed is December 27, 1946. Petitioners filed a motion for rehearing in said Court on January 8, 1947 (R. 223). The motion for rehearing was overruled without opinion, January 21, 1947. (R. 239).

II. The jurisdiction of this case is invoked under Section 2, Article III of the Federal Constitution and Section 240 of the Judicial Code as amended (28 U. S. C. 347).

#### Statement of the Case

### 3.

A sufficient statement is set forth in the petition under the heading "Statement of Matters Involved."

### 4.

#### Specification of Errors

For the sake of brevity, petitioners adopt as their specification of errors the points set forth in their petition, under the heading, "Reasons for Granting the Writ."

#### Summary of Argument.

Point A. The fact that Mexico ceded the territory between the Nueces river and Rio Grande to the United States is not an open question. Such cession is

indubitably established by decisions of this Court; those of the Supreme Court of Texas and by several acts of Legislature of Texas.

**Point B.** Under a stipulation of the treaty itself as well as under the law of nations, as recognized by this Court, the laws of Mexico, as they existed at the conclusion of said treaty, were continued in force as to the property rights of inhabitants of said ceded territories.

**Point C.** When you take into consideration the fact that Texas had no sovereignty over the territory between the Nueces river and Rio Grande until after said treaty was concluded, the court's error, in holding that the last clause of Article VIII of said treaty **does not** prevent the passage by the State of Texas of reasonable and non-discriminatory statutes regulating the title and possession of land in said territory, becomes apparent.

**Point D.** The effect of the last clause of Article VIII of said treaty is to **preserve** the property rights of the class of Mexicans mentioned therein, according to the laws of Mexico as they existed on the date of the conclusion of said treaty.

**Point E.** The United States had the power to make the stipulations contained in the last clause of Article VIII of said treaty.

## ARGUMENT

### Point A

The fact that by the treaty of Guadalupe Hidalgo, Mexico ceded to the United States of America, among other territories, that part of the present State of Texas, lying between the Nueces river and Rio Grande is not an **open** question, but is an indubitable fact, as shown by decisions of this Court; the Supreme Court

of Texas, and the several legislative acts of the Texas' Legislature, thus:

**State of Texas v. Alberto Balli, et-al.**, 190 S.W. (2) 71. Certiorari denied by this Court (May 27, 1946) Vol. 90 L. Ed. 1050;

**Gonzalez v. Ross**, 120 U. S. 605;

**Lerma v. Stephenson**, (Cir. Ct. W. Dist. Texas) 40 Fed. 356;

**Clark v. Hiles**, (Tex. Sup.) 2 S. W. 356;

**State v. Saenz**, 47 Tex. 307;

**State v. Gallardo**, 106 Tex. 274;

**State v. Russell**, 85 S. W. 288, writ of error denied.

In the very recent case of the **State of Texas v. Alberto Balli**, supra this Court denied the State's petition for a writ of certiorari to the Supreme Court of Texas, in the same case wherein the Supreme Court of the State of Texas had held that the territory between the Nueces river and Rio Grande was within the protection of said treaty. The question was squarely raised by the State in the Texas Courts, and likewise in its petition for writ of certiorari to this Court, wherein, at page 14 of said petition, its III Question Presented, reads as follows:

"The Supreme Court of Texas has misconstrued and misapplied the Treaty of Guadalupe Hidalgo by holding that it applies to Padre Island. This Court in **Elisha Basse v. City of Brownsville, Texas**, 154 U. S. 610, 22 L. ed. 420, dismissed an application for writ of error to the Supreme Court of Texas on the ground that:

" 'In *McKinney v. Saviego*, 18 How. 240 (59 U. S. A. V. 367), it was decided that the treaty of Guadalupe Hidalgo has no relation to property included within the State of Texas'."

And in its argument in support of its petition states at pages 59 on its petition and brief that—"The United States District Court for the Southern District of Texas in *Amaya, et-al, v. Stanolind Oil and Gas Company*, 62 Fed. Supp. 184, has recently followed the holding of this Court in *Elisha Basse v. City of Borwnsville* and *McKinney v. Saviego*, 59 U. S. (18 How.) 367," which is the case now at bar.

This Court, on May 27, 1946, denied the State's said petition for writ of certiorari, and overruled its motion for rehearing. (Vol. 90 L. ed. p. 1050).

In *Clark v. Hiles*, 2 S. W. 356 (A. D. 1883) the land in controversy was a Spanish grant on the East bank of the Rio Grande, and Chief Justice Willie, speaking for the Supreme Court of Texas, stated:

"That the land was within the territory declared by the State (Republic) on December 19, 1836, to be subject to her jurisdiction, was not considered a matter of sufficient importance to deserve attention. It is true that, on the date last mentioned, Texas, in defining her boundaries, claimed civil and political jurisdiction to the Rio Grande, but the jurisdiction was never acknowledged by Mexico till the treaty of Guadalupe Hidalgo, in 1848."

Chief Justice Roberts of the Supreme Court of Texas in the case of *State v. Saenz*, 47 Tex. 307, speaking on the question of the treaty and the acquisition by Texas of jurisdiction over that part of the former State



of Tamaulipas extending across the Rio Grande, said:

"That it, the treaty, thereby settled the boundary of Texas as in reference to this part of the country, as between Texas, in the United States, and Tamaulipas, in Mexico," and, further, that "as between Texas and the United States, the right of Texas to the jurisdiction of Texas over the territory east of the Rio Grande, was definitely settled by the Act of Congress (called one of the compromise acts) on the 9th of September, 1850, and acceded to by the State of Texas on the 25th of November, 1850."

Texas had no jurisdiction over the territory below the Nueces was declared by the Legislature of the State of Texas in January, 1858, when, in a report of claims of certain citizens of Laredo, the report was adopted by the House of Representatives (See Journal of the House Vol. 7, pp. 702 and 797), and afterwards adopted by the Senate (See Senate Journal of 1858, pp. 328, 329, 330) and the bill was approved by the Governor). The senate report says: "There can be no pretense that, under the treaty of Santa Ana, and the passage of the act of December, 1836, the territory of Texas extended beyond the Nueces and Medina." The House report reads: "The committee believes that under no equitable or legal view of the law can they, ( certain citizens of Laredo) be entitled to headrights as citizens of Texas, because Laredo was, at the time of the declaration of Independence, a part of the State of Tamaulipas, and continued under Mexican jurisdiction until 1845—its citizens adhering to the enemy." (House Journal, 1858, p. 702).

Act of 27th Legislature of Texas, approved September 5, 1901 at a Special Session, Page 4, Chap. 4, providing for testing of validity of titles in said territory, in part declares:

" . . . that any person or persons who may be the original grantee, heir, legal assign, or in any manner the owner or claimant of any grant, tract or survey of land or part, situated between the Nueces and Rio Grande and below a line drawn from the northern boundary of Webb County to the mouth of Moros Creek, where the same empties into the Nueces river, and emanating or claimed to have emanated from the Spanish or Mexican governments, and having its origin at such time as to be and being within the protection guaranteed by the treaty of Guadalupe Hidalgo, entered into between the United States and Mexico, and proclaimed on the 4th day of July, 1848, may file a petition . . . "

**Acknowledged Limits of the State of Texas  
Was at Nueces River**

President Polk, May 11, 1846, in a message to Congress, after stating that General Taylor had encamped his forces on the east bank of the Rio Grande, opposite the City of Matamoros, Tamaulipas, further stated that,—

"The Mexican forces at Matamoros assumed a beligerent attitude, and on the 12th of April General Ampudia, then in command, notified General Taylor to 'break up his camp within twenty-four hours and to retire beyond the Nueces river,



and in the event of his failure to comply with these demands announced that arms and arms alone, must decide the question,\*\*\*\*

(Richardson, Messages of Presidents, Val. IV at 441).

### POINT B

Said Court's decision that when Mexico ceded said territories to the United States, the laws of Mexico as applied to lands in said territories, were immediately abrogated, is in conflict with the treaty itself, and also the decisions of this Court.

1. Article IX of the original treaty provides that in said ceded territories, until states are made of such territories, the inhabitants of such ceded territories, "shall be maintained and protected in the enjoyment of their liberty, their property, and their civil rights now vested in them according to the Mexican laws. (R. 13-14).

Such original draft of said article was unacceptable to the Senate and it substituted, in lieu thereof, the present article IX of said treaty. (R 16).

After the Senate had made such substitution and before same was submitted to the Congress of Mexico for its ratification, James Buchanan, Secretary of State, addressed a note to the Minister of Foreign Relations of the Mexican Republic, dated March 18, 1848, in which he referred particularly to such amendment and said:

"This article (IX) is substantially the same with the original 9th. article, but it avoids unnecessary prolixity and accords with the former

safe precedents of this Government in the Treaties by which we acquired Louisiana from the French and Florida from Spain." (Treaties and other International Acts, by Miller, Vol. V, p. 254.

On February 8, 1848, Mr. Polk advised Congress that: "The ninth article of the treaty, as adopted by the Senate, is much more comprehensive in its terms and explicit in its meaning, and it clearly embraces in comparatively few words all the guaranties inserted in the original article."

"The protocol asserts that 'The American Government, by suppressing the ninth article of the treaty of Guadalupe Hidalgo and substituting the third article of the treaty of Louisiana, did not intend to diminish in any way what was agreed upon in the aforesaid article (ninth) in favor of the inhabitants of the territories ceded by Mexico. Its understanding is that all of that agreement is contained in the third article of the treaty of Louisiana . . .'" (Richardson, Messages of Presidents, Vol. IV, p. 683).

Mr. Polk also advised the Senate that—"The deliberations of the Mexican Congress, with no explanation before that body from the United States, except the letter of the Secretary of State, resulted in the ratification of the treaty, as recommended by the President of that Republic, in the form in which it had been amended and ratified by the United States. (Richardson, Vol. IV, p. 682, bottom of page).

2. Said doctrine so announced by said Circuit Court of Appeals has no basis in law, and this Court has repeatedly held the contrary. In *Chicago, etc., v. McGlin*, *supra*, this Court stated the rule to be:

"Thus upon a cession of political jurisdiction and legislative power—and the latter is included in the former—to the United States, the laws of the country in support of an established religion, or abridging the freedom of the press, or authorizing cruel and unusual punishments, and the like, would at once cease to be of obligatory force without any declaration to that effect, and the laws of the country on other subjects would necessarily be superceded by existing laws of the new government upon the same matters. But with respect to other laws affecting the possession, use and transfer of property, and designed to secure good order and peace in the community, and promote the health and prosperity, which are strictly of a municipal character, the rule is general that a change of government leaves them in force until by direct action of the new government they are altered or repealed. (114 U. S. 546).

#### POINT C

Said Court's decision that the language employed in the last clause of Article VIII of said treaty, does not prevent the passage by the State of Texas of reasonable and non-discriminatory statutes regulating the title and possession of land in said territories, is we submit, clearly untenable.

The fallacy of such decision is apparent when you take into consideration the fact that the State of Texas

had no sovereignty over said territory until the consummation of the Compromise Act of September 9, 1850 between the United States and the State of Texas.

This situation was admirably expressed by Chief Justice Roberts of the Supreme Court of Texas, in the case of *State v. Saenz*, 47 Tex. 307, wherein he, first speaking of the effect of said treaty remarked that it, "thereby settled the boundary of Texas in reference to this part of the country, as between Texas, in the United States, and Tamaulipas, in Mexico," and secondly he stated that, "As between Texas and the United States, the right of Texas to the jurisdiction of Texas over the territory east of the Rio Grande, was definitely settled by the act of Congress, (called one of the Compromise Acts), on the 9th of September, 1850, and acceded to by the State of Texas on the 25th of November, 1850."

And, of course, Texas accepted such territory, subject to the stipulations of said treaty.

#### POINT D

Said Court's decision that the last clause of Article VIII of said treaty **does not** impose the duty upon the United States to protect the property rights of the class of Mexicans mentioned therein, as they existed under the laws of Mexico when said treaty was concluded, is, we submit, repugnant to the import of the language used and untenable.

#### Petitioners' Contentions Summarized

Petitioners' contend that the phrase, "shall be inviolably respected", as used in the first sentence of the last clause of Article VIII of said treaty, means that the property of the class of Mexicans mentioned therein, shall be, as long as that class owns said property, pre-

served according to the laws of Mexico as they existed when said treaty was concluded, and that the second sentence of said last clause was employed to (1) avoid the effects of the maxim, "*Expressio unius est exclusio alterius*," and permit the descendants of said present owners to take by descent when otherwise they could not have done so; (2) Convert a defeasible estate into an indefeasible estate, and (3) Permit a Mexican alien to purchase said lands, and that Texas acquired sovereignty over said territory on September 9, 1850 by the Compromise Act, subject of course to said stipulations.

#### Trist's Explanation .

Mr. Trist, the American Commissioner throws some light on the situation. In respect to this he reported to his government that:

"The conditions of the inhabitants of the ceded or transferred territory is the topic upon which most time has been expended, in the mode stated at the commencement of these remarks. It constituted a subject upon which it was all-important that the Treaty should be guarded at all points, and should recommend itself as strongly as possible. Every thing proposed on the other side in regard to it was inadmissible or objectionable, in substance or form; and the articles, as they now stand (Article 8 and 9; the latter was recast in the Senate), are the result of draughts prepared by myself, and were repeatedly amplified and otherwise altered, to meet the wishes of the Mexican Commissioners.

"The stipulation regarding the incorporation of the inhabitants into our Union were restricted to Mexican inhabitants, because, as the Mexican Commissioners stated, their Government has no right to enter into such

stipulations in regard to the foreigners who may be residing in the transferred territory. The right of Mexicans residing there, to continue there, retaining the character of Mexican citizens would follow, as a necessary consequence, from the right secured to such Citizens by the Treaty of Commerce, to go and reside there. On this point, and for the right secured to such citizens, resident or non-resident, to retain the landed property, they may now own there, a precedent was afforded by our British Treaty of 1794 (Articles 2 and 9 of Document 16). The liberty to 'grant, sell or devise the same to whom they please,' I qualified by restricting the right of purchase to Mexicans. This stipulation is particularly important to landholders on the Rio Bravo, and especially so, to the Citizens of Tamaulipas, the estates of some of whom, situated south of the Bravo, are dependent in some respect for their value, upon lands on the north of that river, which are used as pastures. (Miller, Treaties, Vol. V, p. 306).

#### Court's Opinion Summarized

The Circuit Court of Appeals refutes this contention and held:

"We are convinced, however, as was the lower Court, that there is nothing in the treaty that suggests that the property of Mexican citizens would not be subject to the valid, and non-discriminatory, property laws of the State of Texas.

"The phrase 'inviolably respected', even if singled out for construction, does not carry with it the significance urged by the Plaintiffs. The phrase must be read in connection with the rest of the paragraph wherein the phrase is further explained by the statement that all Mexicans, whether presently owning, or subsequently



acquiring, property, shall enjoy, with respect to it, guaranties equally ample as those of citizens of the United States.

"Even though we detach the phrase 'Properties of every kind, now belonging to Mexicans, not established there, shall be inviolably respected' and construe it separately, or unrelatedly to the last sentence, Plaintiffs would gain nothing thereby. Although much stress is laid by Plaintiffs upon the word 'inviolably' is there a real or substantial, distinction between a statement that property belonging to Mexicans shall be 'respected' and a statement that property belonging to Mexicans shall be 'inviolably respected'? It would seem that titles that are 'respected' would be as secure as those that were 'inviolably respected'.

"We regard the phrase as a covenant on the part of the United States to respect from thence forth any title that Mexicans then had, or might thereafter acquire, to property within the region, but not that it would guarantee that those Mexicans would never lose their title to persons by foreclosure, sales under execution, trespasses, adverse possession, and other non-governmental acts." (R. 219-220).

Bear in mind that the last clause of said Article VIII contains two separate and distinct sentences, each having a different object, purpose and meaning.

The first sentence thereof, reading: "In said territories, property of every kind, now belonging to Mexicans, not established there, shall be inviolably respected, are, we submit, words of ENACTMENT. There is no room for interpretation. The language is express and intelligible. It is emphatic. It is, in terms, an enact-

ment. It is simple and easily understood. It creates but one *Casus foederis*; that is, the preservation of the property rights of the class of Mexicans mentioned according to the laws of Mexico, as they existed when said treaty was concluded. The Court cannot vary it or super add another.

### The Word "Inviolably" Defined

The word "inviolably" as used in said sentence is the adverb of "inviolable", which word, says Webster, "is derived from the Latin word 'inviolatus', which is defined by Ainsworth to mean, 'not corrupted, immaculate, unhurt, untouched'," or, as defined by the Dictionary of the Spanish Academy, the Spanish word 'inviolablemente' as used in the same article of said treaty in the Spanish language, and which corresponds to the English word 'inviolably', means something or a status, "That must not, or cannot be violated."

This Court has held that the words, "shall be", are controlling words. In *Brien v. Williamson*, 7 How. 21, it was stated that the words "shall be, when used by a law-making power, are words of enactment. They declare the law; and are not to be construed as 'may be'."

Can it be consistently contended that the phrase "shall be inviolably respected" as employed in said treaty and the phrase used in the several State Constitutions that "the right to trial by jury shall remain inviolate" are not synonymous? We submit that they are.

"Remain inviolate", as used in the Constitution of Tennessee, Art. 1, Sec. 6, providing that the right of trial by jury shall remain inviolate means that it shall be preserved as it existed at common law at the time of the adoption of the Constitution. *Gribble v. Wilson*,



49 S. W. 736). (See *Isam v. Mississippi Cent. Ry. Co.*, 36 Miss. 308).

Mr. Cooley, in his work on Constitutional Limitations, remarks that, "The several Constitutions of the States contain ordinations that the right of a trial by jury shall remain, 'inviolable', and it has been uniformly held to construe this to perpetuate the right in the cases in which it exists, under the laws in force at the date of the adoption of the particular constitution." Cooley, Const. Lim. 506.

Said phrase in said constitutions is a guaranty to the people of the state, that their right to a trial by a jury shall be "preserved" as it existed under the law in force at the time of its ordination.

By parity of reasoning, said phrase in the treaty, is a guaranty to the class of Mexicans mentioned therein, that their property rights in said ceded territory, shall be, "preserved", in accordance with the laws of Mexico in force at the time said treaty was concluded.

Petitioners' contention is aptly voiced by Chief Justice Roberts in the case of *State of Texas v. Saenz*, 47 Tex. 307, 311, by remarking that:

"By the treaty of Guadalupe Hidalgo, it was stipulated that the civil rights of Mexicans, within the territory ceded to the United States, as they existed under the laws of Mexico, should be protected by the United States."

Judge Nelson Phillips expressed the same opinion in delivering the opinion of the Supreme Court of Texas in the case of *Kenedy Pasture Company v. State*, III Tex. 200, by stating that:

"It (the treaty) stipulated that the civil rights of Mexicans within territory ceded by Mexico, as they existed under the laws of Mexico when the treaty was signed should be protected."

### **Another Factor To Be Considered**

It is well settled in this Court that "The terms of a treaty are to be applied to the state of things then existing in the ceded territory" (*Strother v. Lucas*, 12 Pet. 488).

"Treaties," said Chief Justice Marshall in the *Ne-reide* case, "are formed upon deliberate reflection. Diplomatic men read the public treaties made by other nations and cannot be supposed either to omit or insert an article, common in public treaties, without being aware of the effect of such omission or insertion. Neither the one nor the other is to be inscribed to inattention." (9 Cranch. 419).

### **Irrefutable Presumptions**

The commissioners who framed and concluded said treaty were selected by each government because of their knowledge and experience in such matters.

It will be presumed that they knew the laws of both countries, and that in the territory between the Nueces river and Rio Grande, lands which had passed into private ownership was owned by Mexicans of two classes, viz: those "established" there and those "not established" there, they also knew of the import of the law of nations and the decisions of the Supreme Court of the United States in respect to "conquered or ceded" territory, and that in the case before them, the municipal laws of Mexico, as to the inhabitants of said ceded

territories would remain in full force and effect until changed by the United States of America, and on the other hand they knew that those non-resident Mexicans owning lands in said ceded territories had no protection whatever, and that their property would be subject to escheat and become valueless unless some protection thereof was stipulated for in said treaty. They also knew that under Mexican law existing at the time, neither a trespasser nor a joint tenant could acquire a title to land by prescription.

They also knew that on account of the war between Spain and Mexico (1810-1821), the war between Texas and Mexico (1836) and the war between the United States and Mexico (1846-1848) the owners of these lands had become scattered over various parts of Mexico, and many had lost all trace of their title, and that such situation would spur the activities of unscrupulous men of both nationalities, to advantage themselves by reason of the invincible ignorance of such owners, occasioned by such circumstances.

They also knew that the United States of America had no limitation laws as respects real property, and/or laws of distribution and descent in regard to real estate, and/or laws regulating the conveyance of land; and they also knew that under the laws of the Republic of Texas, an alien could only hold land by titles emanating from the Republic itself; they likewise knew that under the laws of the Republic of Texas, the State of Texas and the Republic of Mexico, an alien could not inherit land from an alien, or convey lands situated in a foreign country; they knew that many of the original owners of lands situated within said ceded territories, and who were not established there, had died, intestate or other-

wise, and left heirs, who were scattered over various parts of Mexico, and they were unfamiliar with the language, laws and customs of any foreign country, and that unless some stipulation for the protection of the property rights of those non-resident owners, and the heirs of these, their property would be forfeited or rendered worthless.

So, in their wisdom, they framed the stipulation in said treaty, that in said ceded territories "property of every kind, now belonging to Mexicans, not established there, shall be inviolably respected," and by said treaty placed that burden on the United States of America.

Then, in order to protect the rights of the heirs of these non-resident Mexican owners, as well as Mexican purchasers of said lands, they framed the stipulation in said treaty that "The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it, guarantees equally ample as if the same belonged to citizens of the United States," knowing that thereby they were avoiding the effects of the maxim,—*expressio unius est exclusio alterius*,—and enabling an heir of such owners to take by devise or inheritance, when otherwise he could not have done so, and also sanction the sale and conveyance of such lands to a Mexican alien, when otherwise it could not be done, and placed such provision in article VIII of the draft of the treaty to be submitted to the two governments.

Many of the motives which must have operated on Mexico are equally obvious. She reluctantly ceded the Nueces strip to the United States. She knew that the inhabitants of said strip were protected by the law of Nations. She knew that her citizens and subjects who

owned land in said strip and were not inhabitants thereof had no protection under the law of nations, or otherwise. She naturally wished to protect her said citizens and subjects in their ownership in said territory. She did not intend to sacrifice them. Their fidelity to her every vicissitude, stimulated her to exert every effort to that end. In the last clause of the eighth article, the parties were stipulating for the protection, security and advantage of this class of citizens and subjects of Mexico, who owned property in said territory and were "not established there."

Would Mexico have signed said treaty if it had known that its citizens and subjects owning property in said territory between the Nueces river and Rio Grande and who were not established there would be subject to the alien laws and/or the statutes of limitation of the State of Texas? **Most certainly not.** Under the alien laws of Texas their titles would be defeasible. Under Texas short statutes of limitations a trespasser could acquire their titles, while under Mexican law neither a trespasser nor a joint tenant could prescribe.

As further evidence of the intent of Mexico they caused to be inserted in said treaty, Article XXI to the effect that in the event of a misunderstanding as to the meaning of any stipulation contained in the treaty, such should not cause a reprisal, but same should be settled by arbitration.

Now, then, to the question, what did those high contracting parties mean by said two stipulations?

Did they mean by such stipulations that the owners of land in said ceded territory and, "not established" there, should be governed by laws contrary to the laws

of Mexico existing at the time of the conclusion of said treaty?

Did they mean that the right of the heirs at law of these Mexicans owning lands in said ceded territory and "not established" there, should be governed by laws contrary to the laws of Mexico as they existed at the time of the conclusion of said treaty?

Did they mean that the right of an owner of land within said ceded territory and, "not established" there, to convey his land to a Mexican, should be governed by laws contrary to the laws of Mexico as they existed at the time of the conclusion of said treaty?

The draft of said Article VIII was submitted to the two governments, and was acceptable to each, and it is the supreme law of the land.

If the United States were not content to receive the territory, charged with that duty and obligation, they ought to have made, yea, would have made such exceptions as they deemed necessary.

The situation of these Alien Land Owners is aptly illustrated by this Court in the case of *McKinney v. Saviego*, 18 How. 235 as follows:

"The constitution of Texas, by way of exception to the general inhibition upon aliens to 'hold lands except by titles emanating directly from the republic', declares that if any citizen should die intestate or otherwise, his children or heirs shall inherit his estate, and aliens shall have a reasonable time to take possession of and dispose of the same in the manner to be hereafter pointed out by law.'

- "The 10th section of the law of distribution and



descent, (Hart. Dig. Art. 585), provides: 'In making title to land by descent, it shall be no bar to party that any ancestor through whom he derives his descent from the ancestor, is or hath been an alien; and every alien to whom any land may be devised or may descend, shall have nine years to become a citizen of the republic and take possession of such land; or shall have nine years to sell the same, before it shall be declared forfeited, or before it shall escheat to the government.'

"The first clause of this section is substantially a re-enactment of the statute of 11 and 12 William III, c. o., and removes no other defect than the want of inheritable blood arising from the alienage of some person through whom the heir must deduce his claim." *McGreery v. Somerville*, 9 Wheat. 354.

"The second clause modifies the existing laws which regulates the capacities of aliens to take or hold real property in the State, whether by devise or descent.

"But the remedial effect of the act does not extend beyond the disability of an alien heir. It contains no enactment in favor of an alien who may have acquired possession of property in lands, whereby he could make a valid bequest or transmit it to his heirs, whether aliens or citizens by descent.

"The act of which this section forms a part is framed for the disposal of the estates of those having 'title to any estate in inheritance, and regulates its descent or distribution.'

"The prohibition in the constitution upon aliens to hold lands in Texas, and the limited powers of congress to introduce favorable conditions in favor of alien heirs, must be remembered in ascertaining its

meaning. The constitution had provided for the transmission of estates of citizens to their children or heirs, (being citizens), and then provides that congress shall legislate to give to aliens a reasonable time to take possession and to dispose of such an inheritance. Neither the language of the act nor the policy of the State, as it may be discovered from its constitutions and laws, authorizes the conclusion that an alien, claiming real property in Texas, can transmit it by descent, to an heir, who is also an alien.

"The subject matter to which these provisions all relate is the estates of citizens; and we cannot apply their conditions to the special and peculiar case of an inheritance claimed by an alien heir in the right of an alien intestate. The question has not arisen, so far as we can discover, in the courts of Texas; but in the case of *Cryer v. Andrews*, II Tex., 170, the court seems to assume that the act we have considered was a legislative compliance with the constitutional guarantees in favor of their alien heirs of deceased citizens; and that the alien heir must, within nine years, sell the land or become a citizen. In the present instance, citizenship has not been acquired, which that court seems to treat as a prerequisite to an entry on the inheritance."

This Court will judicially know that at the time of the conclusion of said treaty, the United States had no limitation statute in respect to actions to recover real estate; no law regulating the descent and distribution of land; no law regulating the conveyance of real estate.

### Spanish Law of Prescription

This Court will judicially know that the municipal laws of the Republic of Mexico, as they existed on the

date of the conclusion of said treaty, are not foreign laws to be determined as a question of fact, but are laws of the former sovereign and the courts are bound to take judicial notice of them. (See *U. S. v. Perot*, 98 U. S. 426; *U. S. v. Turner*, 11 How. 663; *Fremont v. U. S.*, 17 How. 452; *U. S. v. Chavez*, 159 U. S. 452; *Crespin v. U. S.*, 163 U. S. 163).

The Court will also judicially know that Mexico on the 2nd of February, 1848, had no limitation statute, but had adopted the Spanish Law of Prescription in respect to real estate, and that under it neither a trespasser or a joint tenant could prescribe, which law continued in force until 1889.

See Schmidt's Translation of the Civil Law of Spain and Mexico, and particularly article 1360 thereof, which declares:

"A co-proprietor cannot acquire by prescription the thing he owns in common with another."

The proof in the case at bar clearly establishes the fact that plaintiffs and defendants are joint tenants or tenants in common of the land involved.

Mr. Joseph M. White, the author of White's Recopilation of the laws of Texas and Mexico, a standard authority, treats extensively of the Spanish law of Prescription, and sums up the same in these words, viz:

"A prescription to be good must be in good faith under a legal title.

"The good faith that ought to accompany a possession to complete a prescription may be defined, the just opinion which the possessor

has, that he has acquired a property in the thing.

"If I buy real estate from one who has only authority to collect rents and thinks he has a right, this is not a just opinion and therefore no foundation for prescription."

The title under which a prescription is claimed must not only be one which, in its nature is capable of transferring the property, but that it must be:

"1st. A valid title.

"2ndly. It must not be suspended.

"3rdly. It must be continued.—Pothier, p. 608.

"A title being invalid, nothing can be acquired by prescription." (See White's Recop. Vol. 1, pp. 91).

In short, we submit, that the meaning of the first sentence of said last clause of article VIII of said treaty, is that the then owners of property in said ceded territory and not established there, should be protected in their property rights according to the then existing laws of Mexico, and the second sentence of said last clause means that the heirs of these owners could take said property by descent or purchase, when otherwise they could not do so, and also to sanction the sale of said property to Mexicans, when otherwise they could not do so.

In fact, it is our opinion that any other construction of said stipulation would at least, defeat the intent of the high contracting parties who framed and adopted such stipulations, if not, it is an absurdity in itself.

#### Irresistible Inference

When you take into consideration the fact that;

as heretofore shown, upon the cession of said territory by Mexico to the United States, the municipal laws of Mexico, as they then existed, were continued in force as to those Mexicans who owned lands in said ceded territories and who were "established" there, the inference is irresistible that the only way the high contracting parties to said treaty could protect the interest of those Mexicans who owned lands in said ceded territories and who were "not established" there, was to continue in force the said municipal laws of Mexico as to them. Otherwise, how could those interests have been protected? It is certain that such interests could have no protection under existing laws of the United States. Even the laws of Texas not only were inimical to their rights, but designed to destroy them.

#### POINT E

A treaty may over-ride the power of a state. Would petitioners' construction of Article VIII of the treaty be, as asserted by the Circuit Court of Appeals, violative of the Federal Constitution?

In reference to this, said court propounds this question: "Would the requirement that the property of a non-resident alien be free from the statutes of limitation or state regulation while that of a citizen of the state where the lands are located should be subject to such statutes, be inconsistent with the general concept of the equal protection of the law and likewise repugnant to the general purpose of the last sentence of Article VIII of the treaty?"

This Court has answered that question:

In *Missouri v. Holland*, 252, U. S. 416, 434, 64 L. ed 641, 648, II A.L.R. 984, 40 Sup. Ct., 382, Mr. Justice Holmes, said:

"Valid treaties of course 'are as binding within the territorial limits of the states as they are elsewhere throughout the dominion of the United States' Baldwin v. Franks, 120 U. S. 678, 683. No doubt the great body of private relations usually fall within the control of the states, but a treaty may override its power. We do not have to invoke the later developments of constitutional law for this proposition. It was recognized as early as *Hopkirk v. Bell*, 3 Cranch. 454, with regard to statutes of limitation, and even earlier as to confiscation, in *Ware v. Hylton*, 3 Dall. 199. It was assumed by Chief Justice Marshall with regard to escheat of land to the state in *Chirac v. Chirac*, 2 Wheat. 259, 275. *Hauenstein v. Lyndon*, 100 U. S. 483, *Geofry v. Riggs*, 133 U. S. 258; *Blythe v. Hinckley*, 180 U. S. 333, 340."

Now, having demonstrated, we believe, that said stipulation is not violative of the Federal Constitution, and the burden was placed on the United States to protect the property rights of the class of Mexicans mentioned therein, according to the laws of Mexico as they existed on the date of the conclusion of said treaty, we come to the question,

### **What Is The Court's Duty In Case of Conflict Between Treaty and State Law?**

The constitution provides that all treaties made or which shall be made, under the authority of the United States, shall be the supreme law of the land, and as such they are paramount to the constitution, or the laws of a particular state. (U. S. Const. Art. 6, Par. 3); and Article 3 providing that the judicial power of



the United States shall extend to all cases in law and equity arising under the treaties made, or which shall be made, under their authority, places the interpretation and enforcement of treaties within the scope of the judicial powers of the United States.

It is the necessary result of the explicit declarations of the Federal Constitution above referred to that where there is a conflict between a treaty and the provisions of a state constitution or of a state statute, whether enacted prior or subsequently to the making of the treaty, the treaty will control, thus,

In *Hopkirk v. Bell*, 3 Cranch. (U. S.) 454, the court held that:

"The treaty of peace between Great Britain and the United States prevents the operation of the act of limitation of Virginia upon British debts contracted before the treaty."

The opinion shows that by the fourth article of the definite treaty of peace, between the United States and his Britannic majesty, made on the third of September, 1782, "it is agreed that creditors on either side, shall meet with no lawful impediment to the recovery of the full value, in sterling money, of all bona fide debts heretofore contracted."

Note: The case at bar is of much more import than the above case, because here the treaty was made before Texas had jurisdiction over the territory. In fact Texas accepted the sovereignty subject to said stipulation, but that is not all,

In *Baun v. Sauerwein*, 10 Wall. 218, 222, Strong, J., said:

"It is undoubtedly a general principle, that when a statute of limitation has begun to run, a disability to sue subsequently intervening does not stop its running, even though the disability be one of those expressly recognized in the statute itself. Notwithstanding this, however, the courts in this country have engrafted upon such statutes at least one implied exception. Thus in *Hopkirk v. Bell* (3 Cranch. 454), this court held that the treaty of peace of 1783 by which the independence of the United States was acknowledged by Great Britain, prevented the operation of a Virginia statute of limitation upon debts due to British subjects and contracted before the treaty was made."

In *Pollard's Heirs v. Kibbs*, 14 Peters, at 412, it is said:

"In *Hopkirk v. Bell*, the treaty was held to repeal the Virginia statute of limitations. 3 Cranch. 454."

In *United States v. Thompson*, (D. C.E.D. Ark). 258 Fed. Rep. 434, the Judge remarked:

"In *Hopkirk v. Bell*, 7 U. S. (3 Cranch.) 454, 2 L. ed. 497 and 8 U. S. (4 Cranch.) 164, 2 L. ed. 583, which involved a state statute of limitations, a subject clearly within the exclusive jurisdiction of the states, in actions between individuals, it was held that the state statute must give way to the treaty."

In *Ware v. Hylton*, 3 Dall. (U. S.) 236, Chase, J., said: "A treaty cannot be the supreme law of the land, that is, of all the United States, if any act of a state legislature can stand in its way. If the constitution of a state (which is the fundamental law of the state, and paramount to its legislature), must give way to a treaty, and fall before it, can it be questioned whether the less

power, an act of the state legislature, must not be prostrate? It is the declared will of the people of the United States, that every treaty made by the authority of the United States, shall be superior to the constitution and laws of any individual state; and their will alone is to decide. If a law of a state, contrary to a treaty, is not void, but voidable only by repeal or nullification by a state legislature, this certain consequence follows, that the will of a small part of the United States may control or defeat the will of the whole. The people of America have been pleased to declare, that all treaties made before the establishment of the national constitution or laws of any of the states, contrary to a treaty, shall be disregarded."

In *Goefry v. Riggs*, 133 U. S. at 271, the court in laying down rules of construction of treaties, observed that: "As they are contracts between independent nations, in their construction words are to be taken in their ordinary meaning, as understood in the public law of nations, and not in any artificial or special sense impressed upon them by local law, unless such restricted sense is clearly intended. And it has been held by this court that where a treaty admits of two constructions, one restrictive of rights that may be claimed under it and the other favorable to them, the latter is to be preferred. *Hauenstein v. Lynham*, 100 U. S. 483, 487."

In *People v. Gerke*, 5 Cal. 386, Bryan, J., said: "The treaty making power of the federal government must, from necessity, be sufficiently ample, so as to cover all the unusual subjects of treaties between different powers. If we were to deny to the treaty-making power of our government this exercise of jurisdiction over the property of deceased aliens, upon the grounds of the

interference with the course of descents or the laws of distribution of a state where property may exist, by parity of reasoning we should not make commercial treaties with foreign nations, because, it might be said, some of their provisions would injure the business of a portion of the citizens of one of the states of the Union. If the treaty-making power which resides in the federal government is not sufficient to permit it to arrange with a foreign nation the distribution of an alien's property, then that power resides nowhere, since it is denied to the states, and we must confess our system of government so weak and faulty, as to be incapable of extending to its citizens in foreign lands, that protection which is most common amongst a majority of modern civilized nations." see also *Goefry v. Riggs*, 133 U. S. 258.

In *Huauenstein v. Lynham*, 100 U. S. 483, which was an action by citizens and residents of Switzerland, heirs of an alien who died in Virginia, leaving property which had been adjudged to have escheated to the state, to recover the proceeds of said property, the courts of Virginia held that, by the laws of Virginia, the proceeds of the property sought to be recovered, belonged to the state; but the judgment was reversed by the Supreme Court of the United States, on the ground that the laws of Virginia were in conflict with a treaty of the United States with the Swiss Confederation.

In the recent case of the *State of Texas v. Balli*, (190 S. W. (2d) 71), the Supreme Court of Texas, in a well considered opinion, held that Section VIII of article 14, of Texas' Constitution, which reads as follows:

"Sec. VIII. Persons residing betwene the Nueces River and the Rio Grande, and owning grants for lands which emanated from the Government of Spain, or that of Mexico which grants have been recognized and validated by the State by Acts of the Legislature, approved February 10, 1852, August 15, 1870 and other acts, and who have been prevented from complying with the requirements of said acts by the unsettled condition of the country, shall be allowed until the first day of January, 1880, to complete their surveys, and the plats thereof, and to return their field notes to the General Land Office; and all claimants failing to do so shall be forever barred; provided, nothing in this Section shall be so construed as to validate any titles not already valid, or to interfere with the rights of third persons,"

was invalid as being in conflict with the treaty of Guadalupe Hidalgo, and the United States Supreme Court denied, (May 27, 1946) the State's petition for a writ of certiorari and denied motion for rehearing.

Can there be any distinction in principle between the issue in the case last above and the case at bar?

Another example is Texas Constitution, Art. 13, Sec. 4, which reads:

"Sec. 4. Titles not to be Recorded or Archived; Actual Possession; 'Duly Recorded' Defined.— No claim or title or right of land which issued prior to the 13th day of November, 1835, which has not been duly recorded in the county where the land was situated at the time of such record, or which has not been duly archived in the General Land Office, shall ever hereafter be deposited in the General Land Office, or re-

corded in this State, or delineated on the maps, or used as evidence in any of the courts of this State, and the same are stale claims; but this shall not affect such rights or presumptions as arise from actual possession. By the words 'duly recorded' as used in sections 2 and 4 of this article it is meant that such claim of title or right to land shall have been recorded in the proper office, and that mere errors in the certificate of registration, or informality, not affecting the fairness and good faith of the holder thereof, with which the record was made, shall not be held to vitiate such record."

In *Gonzalez v. Ross*, 120 U. S. 605, the Supreme Court of the United States held that said section 4 was invalid as being in conflict with the treaty of Guadalupe Hidalgo, and remarked:

"A man whose title was good in 1876 when the constitution was adopted, whether his muniments of title were on record or not, could not be deprived of it by a simple *ipsi dixit* of the constitution, any more than by a legislative act."

And in *Lerma v. Stephenson*, 40 Fed. 356, Judge Maxey held the same section above quoted to be invalid, saying:

"The grant being admitted to be a valid grant, is within the protection of the treaty of Guadalupe Hidalgo and the Constitution of the United States, and it is not competent for the State to nullify it as a stale claim, without judicial inquiry, or to prohibit its use in evidence. Treaty of Guadalupe Hidalgo and the second clause of the protocol."

Then again, the Texas' Supreme Court in *Texas-Mexican Ry. Co. v. Locke*, 12 S. W. 81 held the same



section invalid as being in conflict with the treaty of Guadalupe Hidalgo and the Constitution of the United States.

In *United States v. 43 Gallons of Whiskey* (*United States v. Larriere*) (1856) 93 U. S. 198 it is said:

"It cannot be doubted that the treaty making power is ample to cover all the usual subjects of diplomacy with different powers. One of these subjects relates to the acquisition and distribution of property belonging to citizens or subjects of each in the territory of the other. A treaty embracing this matter may contravene the statutes of a state, but if it does the courts will disregard them, and give to the alien the full protection accorded to him by the treaty."

A treaty stipulation may be effectual to protect the land of an alien from forfeiture by escheat, by the laws of the state. See *Orr v. Hodgson*, 4 Wheat. (U.S.) 453; *Huauenstein v. Lynham*, 100 U. S. 483; *In re Parrott*, 1 Fed. Rep. 500; *Kull v. Kull*, 37 Hun. (N.Y.) 476. In this last case, by a treaty, non-resident aliens were allowed privileges in respect to property, which were denied them under a law of the State of New York. The treaty was held controlling.

It is not the province of courts of law to expound treaties with respect to the rights and obligations of the sovereign states parties thereto, but so far as they concern the rights of individuals, it is frequently necessary for the courts to ascertain by construction, the meaning intended to be conveyed by the terms used, and when this duty arises, the courts adopt those general rules applied in the construction of statutes, contracts and written instruments generally, in order to effect the purpose and intention of the makers. *Wilson v. Wall* 6

Wall, (U. S.) 83; U. S. v. Raucher, 119 U. S. 407, Maryatt v. Wilson, 1 B. & P. 436.

In *Ware v. Hylton*, 3 Dall. (U. S.) 237, Chase, J., said: "It is the declared duty of the state judges, to determine any constitution or laws of any state, contrary to that treaty, or any other, made under the authority of the United States, null and void. National or federal judges are bound by duty and oath to the same conduct."

It is obvious that the judges below ignored the injunction that,—"*Judex bonus nihil ex arbitrio suo faciat, nee proposito domesticae voluntatis, sed juxta leges et jura pronunciet.*"

We are confident that this Honorable Court recognizes the difference between "The official and authentic decision of a court of justice upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination," and "an arbitrary edict clothed in the form of a judicial sentence," handed down in such a case. The former is according to law; the latter is contrary to law.

The trial court's findings need but its statement for its refutation. Nay, may it please the Court, such findings awakens something more than a mental dissent. They shock the commonest intelligence and arouse a bitter resentment.

When a federal judge speaks, one feels impelled to take for granted the exercise of an intellect schooled in logic and embellished by the greatest possible accumulation of facts baring on both sides of the question under consideration, but in the instant case, the trial judge limited his brief discussion of the historical facts

involved, to those presented to him by the defendants, and ignored those he was bound to know and were submitted by plaintiffs' counsel, as well as decisions of the Supreme Court of the United States (one as late as May 27, 1946), and those of the Supreme Court of the State of Texas, and acts of Texas Legislature, all of which, unequivocally, refute his conclusions.

Yet, the Circuit Court of Appeals, notwithstanding the fact, that it was fully advised in the premises (R. 189), sanctioned such erroneous holdings by affirming the judgment below.

Respectfully submitted,

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D. B. CHAPIN  
Attorney for Petitioners.

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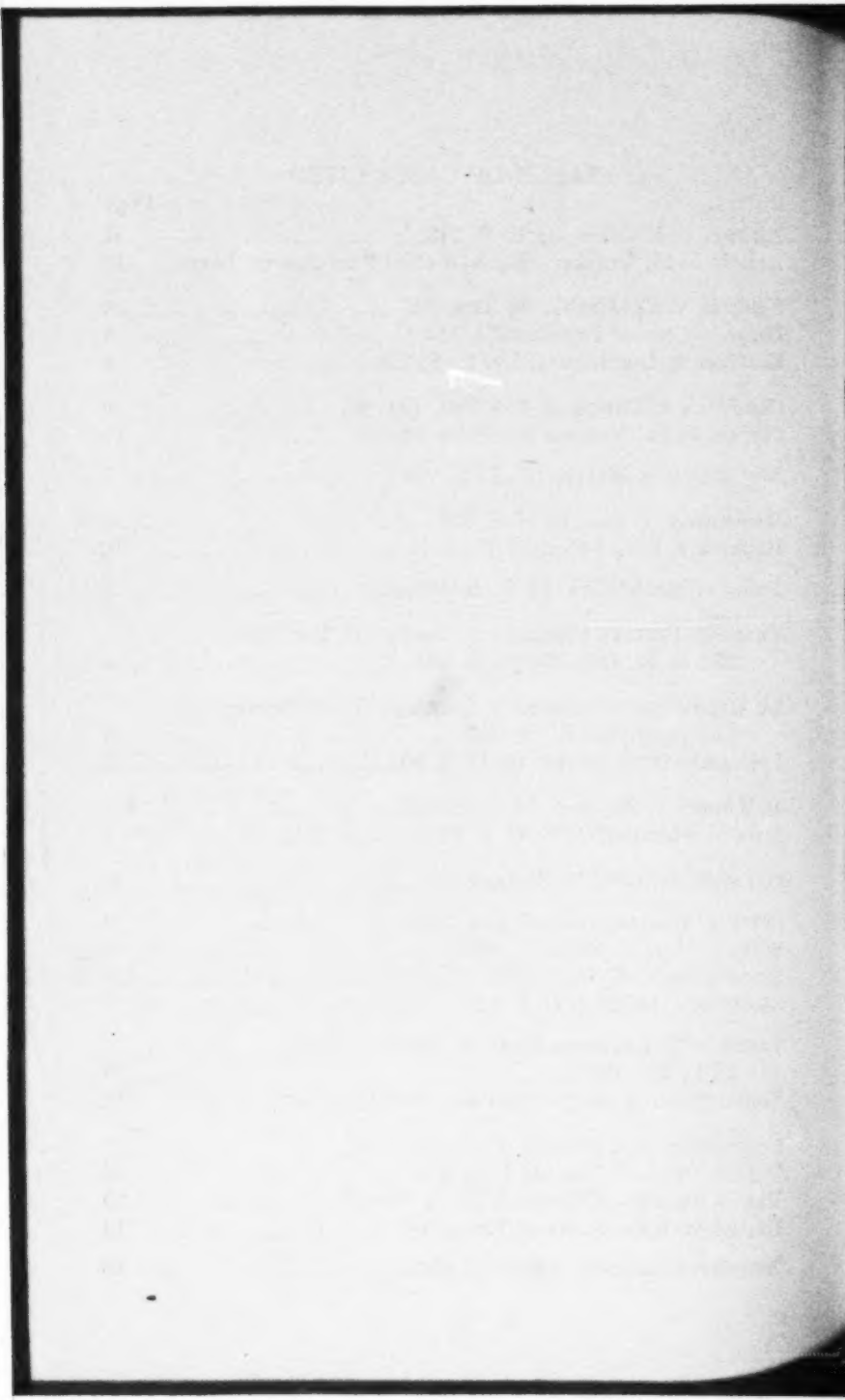
LEWIS B. PERKINS,  
Washington, D. C.

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ELLERY GARLAND BROWN,  
Corpus Christi, Texas  
Counsel for Petitioners.

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No. 1127

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

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DIMAS YGNACIO YBARRA AMAYA, ET AL.,  
*Petitioners*

*vs.*

STANOLIND OIL AND GAS COMPANY, ET AL.,  
*Respondents*

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## REPLY OF RESPONDENTS TO PETITION FOR WRIT OF CERTIORARI

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*To the Honorable the Supreme Court of the United States:*

Your Respondents respectfully file and submit this as their reply to the petition for writ of certiorari.

### REPLY OF RESPONDENTS TO PETITIONERS' SPECIFICATION OF ERRORS NO. 2, REFERRED TO AS POINT 2 IN "REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT," PAGE 9 OF THE PETITION, AND RE- LEVANT TO QUESTION A OF THE "PIVOTOL QUESTIONS PRESENT- ED," PAGE 2 OF THE PETITION

The Treaty of Guadalupe Hidalgo nowhere, in Article VIII, or elsewhere, refers to territory as "ceded." The reference in Article VIII to "territories" is to "territories previously belonging to Mexico, and which remain for the future within the limits of the United States." The territories which would remain for the future within the limits of the United States "as defined



by the present treaty" are all lands north of the line running from the mouth of the Rio Grande River and up that river to the point where it strikes the southern boundary of New Mexico, thence westerly along the southern boundary of New Mexico, and then by other described boundaries to the Pacific Ocean. Obviously north of such line there was land which belonged to Mexico up to the time of the treaty and also land which did not belong to Mexico, but the general effect of the language used in the treaty was to establish non-claim by the Republic of Mexico to all land lying north of such boundary, both that which had belonged to Mexico, as well as that which had not belonged to Mexico up to the time of the treaty. There was no express cession by Mexico of any land, but the method used in defining the boundary was to relinquish claim both to the land which had belonged to Mexico and that which had not belonged to Mexico. Thus, it appears that what is important in determining whether the area between the Nueces and Rio Grande Rivers is subject to the provisions of Article VIII is not whether it was "ceded" by the treaty, but whether it belonged to Texas as a State of the United States at the time of the making of the treaty, or whether it belonged to the Republic of Mexico at that time. So far as the treaty is concerned, it made no distinction between that part of Texas lying between the Nueces and Rio Grande and that part of Texas lying north or east of the Nueces, with reference to the claim of Mexico to either of such areas or with reference to the time when either of such areas "previously belonged to Mexico." We know that at one time all of Texas, including that between the

Nueces and Rio Grande, as well as that north and east of the Nueces, had belonged to Mexico. Between the date December 19, 1836, on which Texas, by act of the Congress of her Republic, declared her southern boundary to be the Rio Grande River, and the date of the treaty, February 2, 1848, little more than eleven years had intervened, during which time the Republic of Mexico never recognized the Republic of Texas nor the State of Texas, nor had it relinquished claim to any part of the State of Texas, either that between the Rio Grande and Nueces Rivers or that north and east of the Nueces River. So far as the historical facts show, there was no difference during such period of approximately eleven years between the character of claim asserted by Mexico to the area between the Rio Grande and Nueces and that north and east of the Nueces. The fact of Mexico's non-recognition of any part of Texas, to the fullest extent it had ever been owned by Mexico, as free of the claim of Mexico is evidenced by the act of the Mexican Republic in withdrawing its ambassador to the United States when the annexation of Texas to the United States was made. The resolutions of annexation nowhere distinguish between that part of Texas lying north and east of the Nueces and that part lying between the Nueces and Rio Grande. Prior to the annexation, the Republic of Texas had declared her southern boundary to be the Rio Grande, and the conclusion must be reached that the Texas which was annexed as a state was one having the Rio Grande as its southern boundary.

We have the authority of this court in *McKinney vs. Saviego*, 59 U. S. 235, for the proposition that the con-

tracting parties in the treaty referred in Article VIII to no portion of the acknowledged limits of Texas, but to territories which had previously to the treaty belonged to Mexico. When the court in that opinion said that the Republic of Texas had many years before been acknowledged by the United States as existing separately and independently of Mexico, and as a separate and independent State it had been admitted to the Union, it must have meant a republic bounded according to the republic's own declaration, that is, on the south by the Rio Grande; for we see from the opinion that the court considered that the "territories" referred to in Article VIII were those which had previously to the treaty belonged to Mexico, and not those to which the Republic of Texas had acquired title many years before.

The Compromise Act of 1850 was a settlement between the State of Texas and the United States of the northern and western boundaries of Texas, and not the southern boundary, which had always been recognized by the United States as being the Rio Grande River.

Although some of the decisions of the Texas courts have referred to the area between the Rio Grande and Nueces Rivers as having been "ceded" by Mexico to the United States, they have uniformly recognized the fact to be that such area between the Rio Grande and Nueces did not belong to Mexico at the time of the treaty. See *State vs. Bustamente*, 47 Tex. 321, and *State vs. Sais*, 47 Tex. 307, by the Supreme Court of Texas, in which it was said that while the Mexican State of Tamaulipas exercised jurisdiction over the area between the Nueces and Rio Grande Rivers, at least until

the Act of the Congress of the Texas Republic of December 19, 1836, if not to 1846, at which time the claim of Texas to the Rio Grande as its boundary was perfected by acts of possession, that is, armed occupation of the area by the United States on behalf of Texas, from the last mentioned date such jurisdiction was lost to the State of Tamaulipas and was thereafter exercised by Texas; and also the full discussion of the same point in *Kennedy Pasture Company vs. State*, 111 Tex. 200, 231 S. W. 683, writ of certiorari denied by this court, in which the Supreme Court of Texas held that the wrongful de facto possession by Mexico of such area between the Nueces and Rio Grande came to a complete end when in 1846 United States troops in behalf of Texas occupied the territory and ousted the Mexicans from it.

The case of *State of Texas vs. Balli* and that of *State of Texas vs. Gallardo*, cited in Paragraph 2 of Petitioners' Specifications of Error, involved the point whether lands north of the Rio Grande, which had been titled by a state of the Mexican Republic prior to the declaration by the Congress of the Republic of Texas in 1836 of the Rio Grande as its boundary, were good as against the Mexican government, and it was held that by the terms of the treaty the new sovereign was bound to respect such titles. That would follow at any rate under the law of nations.

So far as this court is concerned, we think the point was decided by *McKinney vs. Saviego* that territory which had not belonged to Mexico at the date of the treaty was not subject to Article VIII, and this was reaffirmed in the court's opinion in *Basse v. City of*

*Brownsville*, 154 U. S. 610, denying certiorari, in a case involving land near the City of El Paso which lay between the Rio Grande and Nueces Rivers.

The trial court decided the fact to be that the land involved in the suit was not in an area ceded by the Republic of Texas to the United States. We submit that nothing said by Petitioners discloses error in such finding.

**REPLY OF RESPONDENTS TO THE SPECIFICATION OF ERRORS ENCOMPASSED BY THE QUESTION PRESENTED AS QUESTION B, PAGE 2 OF PETITION, WHETHER THE STIPULATIONS CONTAINED IN THE LAST CLAUSE OF ARTICLE VIII OF THE TREATY OF GUADALUPE HIDALGO RENDER INOPERATIVE TEXAS STATUTES OF LIMITATION AS AGAINST THE PETITIONERS (GROUNDS 3 TO 15, BOTH INCLUSIVE, PAGES 10 TO 14 OF THE PETITION)**

In any event, so far as concerns territory which undoubtedly had belonged to Mexico previously to the treaty, within the meaning of Article VIII of the treaty, territory now embraced in the States of New Mexico, Arizona, and California, there are sufficient decisions of the United States courts, including this court, to show that the treaty has not been considered, within the nearly one hundred years since it was ratified, as having set apart the lands in these territories owned by Mexicans not there established at the time of the treaty, their heirs and assigns, as still subject to be governed by the laws of Mexico. No such results as are here urged by

the Petitioners are held to follow from the language of Article VIII of the treaty.

The early procedure of the Congress after the treaty was to set up courts of private land claims to pass upon the validity of titles granted by Mexico, but a limitation of time was put upon the right of claimants under the Mexican title. This was the exercise of jurisdiction by the new sovereign and the application of its own laws to the territory, with no distinction drawn between owners who were established in Mexico at the time of the treaty and those who were established in the United States. The right of Congress to create a court to adjudicate upon such claims in the territory which is now the State of Arizona was not doubted. *Ely vs. United States*, 171 U. S. 220. Also, the Act of Congress of March 3, 1851, to ascertain and settle the private land claims in the State of California was exercise by the United States of authority and jurisdiction over lands in California, territory which had belonged to Mexico, providing that those claiming land by virtue of Mexican or Spanish grants were required to present their claims for validation within two years from the date of such Act, or such land would be considered part of the public domain of the United States. This was in the nature of a limitation upon Mexican titles, but it was never said that the United States could not enact such a law because of the language of Article VIII of the treaty, and it was held in *More vs. Steinbach*, 127 U. S. 70, that such provision requiring the presentation of such claims was obligatory on claimants, that they were bound by the judgment of the court if confirmed by the courts of the United States on appeal. No exception



was made in the Act of Congress for those owning such lands who were not established in the territory at the time of the treaty.

This court held, *Henshaw vs. Bissell*, 85 U. S. 835, that a limitation statute of California passed in 1863 would not begin to run against the title derived from the Spanish or Mexican governments from the date it had been confirmed by the United States, but only from the date of consummation of the title by such confirmation. This was said to be because the legislation of Congress, imposing upon the claimant of title from the Spanish or Mexican governments the burden to present his claim for validation and to secure title, if found valid, was adopted by the government in the discharge of its treaty obligations, but the necessary implication from the decision is that if the Mexican title be confirmed, the land was thereafter subject to the limitation laws of California. There was no suggestion that if the Mexican title be found valid, the land would thereafter remain subject to the laws of Mexico so far as concerned limitation laws in the case of a claimant whose ancestor or predecessor was not established in the territory at the time of the treaty. What was held to be due the claimant was merely to have his title recognized if found to be good. This was also held in *Bottiller vs. Dominguez*, 130 U. S. 238, in which this court held against the contention that Article VIII of the treaty was violated by the Act of Congress requiring claimants of Mexican titles to present their claims to the Board of Land Commissioners within two years, and that the court would follow the statutory enactment of its own government.

The Texas courts have likewise sustained Texas statutes which set up procedures for testing the validity of titles having origin in Mexican or Spanish grants. *State vs. Sais*, 47 Tex. Rep. 307; *State vs. Russell*, 85 S. W. 288.

A New Mexico limitation statute in force in that territory since 1858, which was particularly applicable to ten years' possession under a deed purporting to convey lands granted by Spain, Mexico, or the United States, was held by this court not to be in violation of the Constitution of the United States and no taking of property without due process of law. There was no distinction made in the statute with regard to lands owned by Mexicans "not established there" at the time of the treaty. It was held there was nothing in the Constitution of the United States to prevent the statute from doing its work, which was to give title to him who had been in possession for ten years under a deed describing the land. The New Mexico limitation law considered in that case had the same effect as the Texas statute, that is to say, to vest title, precluding all claims.

The United States Circuit Court for the Tenth Circuit held that land which was subject to the provisions of Article VIII of the treaty was not exempted from ordinary taxes for governmental purposes, levied by the State of New Mexico. *Chadwick vs. Campbell*, 115 Fed (2) 401. The court said that the provisions of Article VIII merely guaranteed to Mexican owners equality in respect of such property with citizens of the United States owning similar property; and rather than creating an exemption from taxation, it suggests equality, and forbids discrimination.

There is, we believe, no sound reason to think that limitation laws which provide for the passage of title to another upon his adverse use, possession, and enjoyment of the land for a stated period are in violation of rights to or involve the failure to respect property. The Texas limitation statutes provide that when an action for the recovery of real estate is barred, the person having peaceable and adverse possession shall be held to have full title, precluding all claims. Article 5513, Vernon's Revised Civil Statutes of Texas. The title which becomes vested under the Texas limitation laws is a title by purchase. The title by purchase results from the lawful acquisition of real estate by any means whatever, except by descent. 51 *C. J.* 94. Adverse possession may be said to transfer the title as effectively as a conveyance from the owner; it may be considered as tantamount to a conveyance. *Toltec Ranch Co. vs. Cook*, 191 U. S. 532. The imposition by the State of a limitation law is not a violation of property rights, nor does it deprive one of property without due process of law, unless in its application to an existing right of action it unreasonably limits the opportunity to enforce that right by suit. *Wheeler vs. Jackson*, 137 U. S. 245. No complaint is made here, and certainly no proof made, that the Texas limitation laws are unreasonable in their periods of prescription.

The rule of construction given by this court to such treaty provisions as contained in the third paragraph of Article VIII of the Treaty of Guadalupe Hidalgo is that treaties are given such construction as tends to the common advantage of the contracting parties and to place them upon an equality, but not such as will put

aliens upon a more favorable footing than our own citizens. *Todok vs. Union State Bank of Harvard, Neb.*, 74 L. Ed. 956. In considering a Nebraska statute which required the wife's joinder in the conveyance of a homestead, under a contention that a citizen of Norway could convey the property, though homestead, without his wife's joinder, because of a treaty between Norway and the United States which provided that the subjects of the contracting parties in the respective states may freely dispose of their goods in favor of such persons as they think proper, the court said that notwithstanding the policy of Nebraska with respect to homesteads was established after the treaty, it was not to be supposed that the treaty intended to secure the right of disposition in any manner whatever regardless of reasonable regulations in accordance with the property law of the country of location, bearing upon aliens and citizens alike.

This court has held that laches may bar rights guaranteed under a treaty, *La Republique Francaise vs. Saratoga Vichy Spring Company*, 191 U. S. 427, holding that it could never have been intended by a treaty to put citizens of other countries on a more favorable footing than our own citizens, or to exempt them from the ordinary defenses that might be made by the party prosecuted.

The Circuit Court nowhere held, as argued in Point B of Petitioners' brief (Page 23), that upon the making of the treaty the laws of Mexico, as applied to lands in the territories mentioned under Article VIII, were immediately abrogated, as the court cited with approval

*Leitensdorfer vs. Webb*, 61 U. S. 891, holding that under the law of nations, after the substitution of a new supremacy, private relations remain in full force and unchanged except insofar as found to be in conflict with the Constitution and laws of the United States or with any regulation which the conquering and occupying authority should ordain. To the same effect is *Strother vs. Lucas*, 9 U. S. 72, in which it is said that after the conquest, rights of property are protected in the conquered country and held sacred and inviolable when ceded by treaty, with or without any stipulation to that effect, and the laws, whether in writing or evidenced by the usage and customs of the conquered or ceded country, continue in force until altered by the new sovereign. The third paragraph of Article VIII does no more than state the law of nations which would be applicable, as pointed out by these decisions, to the protection of property in a conquered country or that ceded by treaty, with or without stipulation to that effect. The obligation imposed by the principles of international law to respect property rights within an annexed territory is substantially that recognized by the treaty, *U. S. vs. O'Donnell*, 303 U. S. 501.

The Texas limitation laws of three, five, and ten years were adopted by the Congress of the Republic of Texas after the conquest, and these laws were republished and carried forward by the State of Texas after its admission into the union, as well as subsequently the twenty-five-year statute of limitations. These were regulations which the conquering authority ordained, and it cannot be said that the laws of limitation and

prescription of Mexico remained in force after so altered by the new sovereign.

The enactment by the new sovereign of laws directing all claimants under the former sovereign to file their claims before a board and in which the time for filing such claims is limited, and which are said to be laws analogous to acts of limitation, is within the authority of the new sovereign. *Strother vs. Lucas*, supra.

We believe these conclusions answer the Petitioners' Specifications of Error 5 to 9, inclusive, that the Republic of Texas and the State of Texas were without right under the treaty to enact its limitations laws, and that the Circuit Court was right in holding that there is nothing in the treaty that suggests that the property of Mexican citizens would not be subject to the valid and non-discriminatory property laws of the State of Texas.

The argument is made under Point C of the brief (Page 23) that the State of Texas had not the right to enact its limitation laws because it had no sovereignty over the territory until the consummation of the Compromise Act of September 9, 1850, between the United States and the State of Texas. Such Act of Congress, which, when agreed upon by the State of Texas, became a compact, is captioned "An act proposing to the State of Texas the establishment of her northern and western boundaries, the relinquishment by the said State of all territory claimed by her exterior to said boundaries, and all her claims upon the United States, and to establish a territorial government for New Mexico."



The Act specifically dealt with the boundary of Texas on the north and also on the west, ending with the intersection of the parallel of 32° north latitude with the Rio Grande River, and while the description of boundary also runs from the last mentioned point with the channel of said river to the Gulf of Mexico, it is plain that the compact dealt only with the establishment of the northern and western boundaries of Texas. *United States vs. State of Texas*, 162 U. S. 1. No controversy ever arose between the United States and Texas with respect to the Rio Grande as a boundary, except with respect to that part of the present State of New Mexico lying east of the Rio Grande as that river runs north and south in New Mexico. The Supreme Court of Texas held in *Kennedy Pasture Company vs. State*, 111 Tex. 200, that upon the admission of Texas to the United States, the United States accepted the Rio Grande as the boundary between Texas and Mexico and perfected the sovereignty of Texas to the area between the Nueces and Rio Grande Rivers by taking armed occupation, before the Treaty of Guadalupe Hidalgo. In that case, certiorari was denied, 258 U. S. 617. All connection of the United States with the area between the Nueces and Rio Grande Rivers ceased with the treaty. *Baldwin vs. Goldfrank*, 88 Tex. 249.

Under Point D, Page 26 of Petitioners' brief, relevant to Specifications of Error 10, 11, 12, and 13 of the petition, the argument is made that the purpose and necessity for the third paragraph of Article VIII of the treaty was to extend to the alien heirs and assigns of Mexicans "not established therein" the right to take

property in the territory by descent or contract, which would not otherwise be vouchsafed to them under the law of nations; and that such alien heirs and assigns were not under the law of nations entitled to the same respect for their property as were "the present owners." We have, however, the authority of this court, *Airhart vs Massieu*, 98 U. S. 213, for the construction of the Constitution and laws of the Republic of Texas in force at the time of the treaty that they permitted the citizen of Mexico the right to alienate his lands in Texas and to transmit the same to his heirs, also citizens of Mexico, and the right of Anna Massieu, an alien, to inherit through alien Mexicans was sustained under such Constitution and laws of Texas. It is hardly to be thought that the American commissioners, in drafting the treaty, and the United States Senate, in ratifying it, would consider it necessary to establish by the treaty any such novel doctrine as that areas of Texas should be set up free of the operation of Texas municipal laws, and subject only to Mexican municipal laws, in order to guarantee to the alien heirs and assigns of Mexican aliens rights which we see already existed under the law of nations and the Constitution and laws of the State of Texas.

If it could be said that the purpose of the last clause of Article VIII of the treaty was to inhibit the State of Texas from subsequently establishing by law the right of forfeiture of lands on account of alienage, that at least is a moot question here, as this is not a suit to escheat lands on account of alienage, and in passing, we may remark that, as held in *Airhart vs. Massieu*, and also in *Jones vs. McMasters*, 61 U. S. 605, the laws

of the Republic of Texas and of the State of Texas for the forfeiture of the lands of Mexicans because of alienage were provisional only, and not operative.

The proper reply, we think, to be made to Point E argued in Petitioners' brief (Page 41), applicable to Specification of Error No. 14 (Page 14 of the petition), is to refer to the opinion of the Circuit Court that a construction should be given Article VIII so as to avoid, if possible, a decision adjudging the treaty to be in conflict with the Constitution. Cases cited by Petitioners on the point are far from holding that a treaty may set up within the United States territories or types or classes of property which shall remain subject to the municipal laws of another sovereign. The cited case of *Hopkirk vs. Bell*, 3 Cranch 454, merely held that the running of a Virginia statute of limitation upon a debt contracted before the treaty was suspended by the treaty in favor of persons beyond the seas, the treaty involved in that case having provided for such suspension. The Treaty of Guadalupe Hidalgo makes no provision for the suspension of limitation laws, and in this connection it may be mentioned that the running of Texas limitation laws applicable to real property is not suspended by the absence from the country of the owner. We think it ought to be held that Article VIII of the treaty does not relieve any real property in Texas from the operation of the Texas municipal laws so as to accord with the general rule that the disposition of real property, whether by deed, descent, or any other mode, is exclusively subject to the government within whose jurisdiction the property is situated. *U. S. vs. Fox*, 94

U. S. 315; *U. S. vs. Crosby*, 7 Cranch 115; *Oakey vs. Bennett*, 11 Howard 33.

We respectfully ask that the petition for certioiari be denied.

CHARLES D. TURNER,  
FRANK M. KEMP,

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B. D. TARLTON,  
*Attorneys for Respondents.*

FRANK J. SCURLOCK,

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PAUL A. McDERMOTT,  
*Of Counsel for Respondents.*

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CHARLES ELMORE DUFFLEY  
CLERK

No. 1127

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## SUPREME COURT OF THE UNITED STATES

October Term, 1946

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DIMAS YGNACIO YBARRA AMAYA, ET AL  
Petitioners

v.

STANOLIND OIL & GAS COMPANY, ET AL  
Respondents

---

PETITIONERS' MOTION FOR REHEARING ON  
THEIR PETITION FOR CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

---

D. B. CHAPIN,  
P. O. Box 256  
Mission, Texas  
Attorney for Petitioners

ELLERY GARLAND BROWN,  
LEWIS B. PERKINS  
Of Counsel for Petitioners.





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**PETITIONERS' MOTION FOR REHEARING ON  
THEIR PETITION FOR CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE FIFTH CIRCUIT**

**TO THE HONORABLE, THE SUPREME COURT  
OF THE UNITED STATES:**

Comes now the petitioners in the above styled and numbered cause and respectfully files this, their Motion for Rehearing in said cause, this Honorable Court having denied petitioners' petition for certiorari on April 14th, 1947, and as grounds for such motion would respectfully show the Court:

**I.**

This Court has jurisdiction of this cause under Section 2 of Article III of the Federal Constitution and

Section 237 (b) of the Judicial Code as amended by the act of February 13, 1925 (28 U.S.C.A. Section 344 (b) ), in that, this controversy is between Mexicans, subjects, and citizens of the Republic of Mexico and citizens of the United States, and involves a construction or interpretation and/or application of the last clause of Article VIII of the treaty of Guadalupe Hidalgo, entered into between the Republic of Mexico and the United States of America, concluded February 2, 1848, wherein and whereby Mexico ceded to the United States all that part of the present State of Texas, lying between the Nueces river and Rio Grande, and substantial and highly important international and national questions are presented to this Honorable Court for determination, because:

1. In denying the claim of petitioners to the land sued for on the sole ground that their claim thereto was barred by Texas' statutes of limitation, the Honorable Circuit Court of Appeals thereby denied your petitioners a right which the United States obligated and bound itself to protect according to the laws of Mexico as they existed at date of the conclusion of said Treaty, as is emphatically shown by the unambiguous language in the first sentence of the last clause of Article VIII of said treaty, which sentence in the treaty in English language reads as follows:— "In said territories, property of every kind, now belonging to Mexicans, not established there, shall be inviolably respected", while in the treaty in the Spanish language, it reads:— "Las propiedades en todo genero en los expresados territorios, y que pertenecen ahora a mexicanos no establecidos en ellos, seran respetadas inviolablemente."

### Remarks

a. The trial court held that said territory was a part of the State of Texas at the date of said treaty, and the Circuit Court of Appeals in effect, affirmed such holding, but that question has been definitely settled by decisions of this Court; the Supreme Court of Texas and by several acts of the Texas' Legislature as shown in petitioners' Supporting Brief, pp. 18 et-seq. and confirmed by history, see Conclusion of this Motion, all of which conclusively refutes such holding.

b. The word "inviolably" as used in the English language treaty and the word "inviolablemente" as used in the Spanish language treaty (both being originals) are derived from the Latin word "inviolatus" which has a well defined meaning in all civilized lands. (Petitioners discuss the meaning of the word at page 30 of their supporting brief).

c. The result of this law suit rests upon the meaning of the language used in the said first sentence of the last clause of article VIII supra. We have found no case construing the phrase "shall be inviolably respected" as used in said sentence, but there are numerous cases construing the meaning of the phrase "shall remain inviolate" as employed in many state constitutions declaring that the right to a trial by jury shall remain inviolate. Mr. Cooley, in his work on Constitutional Limitations, states that the several constitutions of the states contain ordinations that the right of a jury trial shall remain "in-

violate," and it has been "uniformly held to construe this to perpetuate the right in the cases in which it exists, under the laws in force at the time of the adoption of the particular constitution." (Emphasis ours). Cooley, Const. Lim. 506.

### Query.

Are not the two phrases synonymous? We submit that they are, and that the right of the class of Mexicans mentioned were "perpetuated under the existing laws of Mexico."

d. Is it unreasonable to presume that the high contracting parties who framed said treaty, in order to protect the rights of the heirs of those owners, and enable them to inherit when otherwise they could not have done so, framed the second sentence of the last clause of said Article VIII, which reads: "The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it, guaranties equally ample as if the same belonged to citizens of the United States"? Otherwise the maxim,—"*expressio unius est exclusio alterius*" would apply. Likewise they converted what would have been a defeasible estate into an indefeasible estate. (See our Supporting Brief p. 32, et-seq. also *McKinney v. Saviego*).

2. In denying the claim of the petitioners to the land sued for on the ground that article VIII of said Treaty "does not prevent the passage by the State of Texas of reasonable and non-discriminatory statutes regulating the title and possession of land", said Hon-

orable Circuit Court of Appeals ignored the indubitable fact that Mexico ceded said territory to the United States, and that the United States ceded the same to the State of Texas by the Compromise Agreement of 1850, and that it accepted sovereignty over said territory subject, as of course, to the stipulations of said treaty, and thereby said Court denied your petitioners a right guaranteed to them by the said treaty stipulations, when it, said Court, was duty bound to enforce such right. (State v. Saenz, 47 Tex. 307).

### Remarks

Even if the State of Texas had been sovereign over said territory at time of said treaty, yet, the United States, under its treaty making power, would have had authority to protect the rights of alien land owners against Texas' statutes of limitation. (See petitioners' authorities under Point E of Supporting Brief.)

3. In denying the claim of petitioners to the land sued for on the ground that there is no real or substantial distinction "between a statement that property belonging to Mexicans shall be "respected" and a statement that property belonging to Mexicans shall be 'inviolably' respected" said Circuit Court of Appeals ignored the definition of the KEY word "inviolably" as used in the first sentence of the last clause of said article VIII, and thereby denied your petitioners of a right guaranteed to them by said treaty.

4. In denying the claim of the petitioners to the land sued for on the ground that: "Concededly, for a century, Mexico has had no suzerainty over the areas in which these lands are situated. Whether the lands

involved were ceded or conquered, they have been a part of the United States for at last one hundred years and a part of the State of Texas at least since the enactment of the Compromise Agreement of 1850. Whether by cession or conquest, they were split away from the Mexican nation so that there was a substitution of sovereignty under which all laws theretofore in force which were in conflict with the political character and constitutional institutions of the substituted sovereign **lost their force,**" while the treaty contained stipulations to the contrary. (See Point B, Petitioners' Supporting Brief) and this Honorable Court has repeatedly held otherwise, said Appellate Court disregarded said stipulations and the authority of this Court, and by its said act denied your petitioners of a right guaranteed to them by said treaty, and which this Government obligated itself to protect.

5. In upholding the respondents claim to the land sued for under Texas' statutes of limitation, on the basis that to construe said first sentence of the last clause of said article VIII as continuing in force the municipal laws of Mexico as to the class of Mexicans therein mentioned would be violative of the Federal Constitution, said Appellate Court denied your petitioners a right guaranteed to them by said treaty.

6. In upholding the respondents limitation title to the land sued for by petitioners, on the basis that a treaty stipulation must give way to a state constitutional or statutory provision in conflict therewith, said Appellate Court denied your petitioners a right guaranteed to them by said treaty.

7. In affirming the judgment below the Honor-



able Circuit Court of Appeals ignored and refused to apply the fundamental rule that "by the stipulations of a treaty are to be understood its language and apparent intention manifested in the instrument, with a reference to the contracting parties, the subject matter and persons on whom it is to operate." (U. S. v. Arrendo, 6 Pet. 710).

### Remarks

The stipulation in Article IX of the treaty, as originally drawn, to the effect that in said ceded territories until states are made of such territories, the inhabitants of such ceded territories "shall be maintained and protected in the enjoyment of their liberty, their property and their civil rights now vested in them according to the Mexican laws," together with the protocol explaining the reason for substituting the present Article IX, clearly shows the intent of the contracting parties as to meaning of the first sentence of the last clause of Art. VIII (See our supporting brief, Point B, p. 237).

### II.

The Honorable Circuit Court of Appeals decided each and all of the substantial and highly important international and national questions stated in I, *supra.*, erroneously and contrary to the emphatic language employed in said Article VIII of said treaty; the law of nations and the weight of authority.

### III.

This Honorable Court erred in denying petitioners' petition for certiorari, because substantial international

and national questions are involved herein, and said Circuit Court of Appeals decided all said questions erroneously, and denied the title of petitioners to the land sued for on invalid grounds, all of which is more clearly shown in Petitioners' Petition for Certiorari and Supporting Brief to which reference is here made.

### CONCLUSION

In order for one to understand the important issues presented for determination, it is necessary to be familiar with the historical back-ground of the boundaries of the State of Texas which was admitted into the Union in 1845. Of course, this Court has judicial knowledge of those facts, and for the purpose of refreshing the court's memory we, as briefly as possible refer to them.

1. Prior to 1821 the territory now composing Texas was under the sovereignty of the kingdom of Spain, which had divided said territory into provinces, namely: The Province of Texas which extended south and west to the Nueces river; the Province of Tamaulipas, which extended from the mouth of the Nueces river to the mouth of Moros creek, and thence south and west across the Rio Grande for complement; the Province of Coahuila, which lay to the west of and adjoined Tamaulipas and west to the east line of New Mexico and south and west across said Rio Grande for complement, and the Province of Chichuachua which lay to the west of Coahuila and south of New Mexico and extended south and west across the Rio Grande.

2. Prior to 1821, the people of the various Spanish provinces, collectively known as New Spain or the Colony of Mexico, including the provinces of Texas,

Coahuila, Tamaulipas, Chihuahua, and New Mexico revolted against the Spanish regime, and in 1821 gained their independence, and thereby each of these provinces became and were independent sovereignties and continued so until they formed the Mexican Confederacy, and created a Mexican Congress, which in turn formed the Mexican Constitution of 1824.

3. By its Constitution of 1824, Mexico divided its territory into sovereign States, including the States of Texas, Tamaulipas, Coahuila, Chihuahua and New Mexico, and Texas and Coahuila were united for political and judicial purposes. Each of these states adopted a constitution and a colonization law.

4 The Constitution of Coahuila and Texas declares "that the boundary of the State is that embraced in the provinces formerly known by the names of Coahuila and Texas." (Laws and Decrees of Coahuila and Texas, p. 313).

5. Likewise the state of Tamaulipas had the same boundaries as the former province of Tamaulipas.

6. Under liberal colonization laws that part of the present State of Texas lying east of the Nueces river was settled, principally with English speaking people.

7. Said State of Texas was divided into municipalities (counties) and the most southern municipality was San Patricio, which extended from the Nueces river north and east for complement.

8. Austin's Map of 1835 shows the boundary of the Mexican State of Texas to extend south and west

to the Nueces river, and west to the east line of New Mexico on the meridian of 103 degrees west of Greenwich. (See Austin's Map in Pocket in Vol. I of John & Henry Sayle's Early Laws of Texas).

9. The west line of Texas at the 103 meridian west of Greenwich is also established by several colonial land grants made by Texas to Samuel J. Wilson and other colonizers, as shown by Sayle's Early Laws of Texas, Arts. 102, 107 and 114, and also by Austin's said Map.

10. The delegates who, on March 2, 1836, in convention assembled, declared the independence of the peoples of the Mexican State of Texas, were selected by the people of each of the municipalities of said State, and, of course, none of the municipalities extended below the Nueces river. (See Worthan's History of Texas, Vol. III, page 219, et-seq.)

11. The decisive battle of San Jacinto was fought April 21, 1836, and thereby the people of Texas achieved their independence.

12. Following the battle of San Jacinto, Santa Ana made two treaties with the conquering Texans, one was a public treaty and the other a secret treaty.

In the public treaty Santa Ana agreed that "The Mexican troops will evacuate the territory of Texas, passing to the other side of the Rio Grande."

In the secret treaty he agreed "to prepare matters in the Cabinet of Mexico, so that the mission that may be sent thither by the Government of Texas may be well received, and that by means of negotia-

tions all differences may be settled, and the independence that has been declared by the convention may be acknowledged," and by article 4 agreed that "A treaty of comity, amity and limits, will be established between Mexico and Texas, the territory of the latter not to extend beyond the Rio Bravo del Norte." (See Wortham's History of Texas, Vol. III, pp. 328-330).

13. On the same day the convention adopted the declaration of independence, it appointed a committee, consisting of one member from each municipality to draft a constitution, which it did.

14. This constitution was adopted by the people of Texas and it in effect converted what had been a part of the sovereign State of Coahuila and Texas into an independent nation, i.e. The Republic of Texas, and its boundaries were the same as the boundaries of the Mexican State of Texas.

15. All history shows that the Republic of Texas never made any pretense or took any steps to show that it was asserting jurisdiction beyond the borders of the former State of Texas under the Mexican Constitution until December 19, 1836, when the Congress of the Republic passed an act declaring that its boundaries extended to the Rio Grande from its mouth to its source.

It will be observed that by this act the Republic asserted sovereignty over all that part of the Mexican States of Tamaulipas, Coahuila, Chihuahua lying north and east of the Rio Grande, and to all that part of the territory of New Mexico lying east of the Rio Grande, including the ancient city of Santa Fe.

16. Mr. Wortham, in his valuable History of Texas, after quoting from the *Telegram* of Houston, Texas, the most widely read newspaper in the State at the time, that "The title of Texas to Santa Fe (before annexation) was as valid as its title to Point Isabel, Laredo and the intermediate towns of the Rio Grande," proceeded to say: "That was so palpably true that it could not be disputed, for the only argument that could be made against the Texas title to Santa Fe was that Santa Fe had never been within the State of Coahuila and Texas, nor within the Province of Texas under the Spanish rule, and that the Republic of Texas had never established jurisdiction over it. The same could be said of Point Isabel and Laredo and the soil on which the battles of Palo Alto and Resaca de Las Palmas had been fought. The territory between the Nueces and Rio Grande had been part of the State of Tamaulipas before the revolution and the government of the Republic of Texas had never exercised jurisdiction over it." (See Wortham's History of Texas, Vol. IV, p. 221).

17. That the Republic was *insincere* in its claim of boundary is evidenced by many facts, thus:

a. The Judiciary Committee of the first Congress of said Republic, on November 21, 1836, to whom had been referred a bill from the Senate "authorizing the President to have the colonization laws translated," recommended the following amendments "strike out all after the word 'to' in the fifth line of the first section, and insert the following: 'Employ a suitable person to translate the colonization laws of Coahuila and Texas, also the colonization laws of the Re-



public of Mexico, so far as they relate to Texas, at as early a date as practicable'." (Journal, 175).

Note: If the Republic had claimed any part of Tamaulipas, it certainly would have had its colonization laws translated.

b. The act of December 22, 1836, establishing the powers and jurisdiction of the district courts and creating judicial districts, only claimed jurisdiction over the country to the Nueces river. (Acts of 1836, 199).

c. The Congress, by its act of 1840 adopted the common law of England and by same act repealed the laws of Coahuila and Texas, but makes no mention of the laws of Tamaulipas. (Sayle's Early Laws of Texas, Art. 707).

d. On December 14, 1837, the Congress of the Republic of Texas passed an act establishing a General Land Office for the Republic, and refers only to lands located by virtue of the colonization law of the State of Coahuila and Texas (Sayle's Early Laws of Texas, Vol. I, Art. 398).

e. A reference to President Houston's veto of the bill establishing a General Land Office, will show he only alludes to the laws and titles of Coahuila and Texas.

f. Then there is the letter dated February 20, 1839, written by the Department of State of the Republic of Texas to Barnard E. Bee, notifying him that the President of the Republic had appointed him Minister Plenipotentiary of the Republic of Texas to Mexico, with carte blanche authority to effect a treaty of

peace, and settlement of the boundary question, and, also, as agent of the Republic to purchase the territory lying between the Nueces and Rio Grande, which letter reads, in part as follows:

"It is hardly to be expected that you will be formally received as Minister Plenipotentiary of this Republic, until a treaty of peace has been made, and the Independence of the country acknowledged. Indeed such a reception would be in itself an acknowledgment of our legitimate existence as a nation and a virtual recognition of our Independence; and as that is more than we can look, or even hope for, until attained by negotiation, you will, in the event of a refusal to receive you as Minister, make your propositions as the agent of this government; and to enable you to do so, separate credentials for this purpose are furnished you.

"Indeed it may be better, not to make known your higher functions, until you have sounded your way as agent, and ascertained whether or not, they will be disposed to treat with you in either capacity; but in this, as in all other matters preliminary to entering upon your negotiations you will be guided by your own judgment and discretion.

"Your powers as agent are plenary, and under them you are fully authorized to negotiate for peace, and to form and sign a treaty securing it, but in making such treaty, you will require the unconditional recognition of the Independence of Texas, and will admit no limits less than those prescribed by the act of Congress entitled 'An act to define the boundaries of the Republic of Texas' approved 19th December, 1836, a copy of which is hereby furnished you.

"These two last points you will regard as a *sine qua non* to any permanent treaty with Mexico; but if you find that it will aid you in the ultimate accomplishments of your objects, to negotiate a treaty of peace and recognition in the first instance, leaving the question of boundary to be subsequently settled in a general treaty of Amity, limits, commerce, navigation and intercourse, you are at liberty to form such a treaty; but in doing so, you must be careful that nothing appears in it which could by any possibility be construed into an intention on the part of this Government, to yield any portion of the Territory claimed by the act of Congress to which I have already refer'd you.

"In negotiating a treaty, having for its immediate objects nothing further than the restoration of peace, and the recognition of our Independence, it will be better if it can be done consistent with the claims of this government, to define the limits at once, as by doing so, you will avoid much embarrassment and discussion in your future negotiations of a general treaty; you will therefore urge the subject as far as you can, without involving the risk of breaking off your present negotiations, and interrupting your future intercourse with the Government.

"Should Mexico express a willingness to establish peace, and recognize the Independence of Texas to the extent of her Original boundaries when forming a part of the Mexican Confederacy, but peremptorily refuse to admit our claims to the entire territory embraced within the limits defined by the act of Congress, you may propose a compromise by negotiating for the purchase of all that portion of it which is not within the original boundaries, at a stipulated price; but the sum to

be thus stipulated for it, must not exceed five Millions of dollars . . . ”

Then the letter refers to the Secret treaty made by Santa Ana and the Cabinet of this Republic, on the 14th of May, 1836, at Velasco, wherein he promised, in consideration of certain favors, to use his best endeavors with his Government to procure a treaty of limits of Texas “not to extend beyond the Rio Bravo del Norte,” and in respect to which the letter instructs Bee how to approach Santa Ana, because the Cabinet of this Republic had not complied with its agreement with him, and admonished Bee that

“It is not contended by this Government that the agreement made with Genl. Santa Ana, while in this country, and a prisoner of war, is legally binding on the Mexican Government;” (Garrison, American Historical Assn. Vol. II, pp. 432-435).

Thereby the Cabinet of the Republic admitted, 1) the two treaties of Velasco, made with Santa Ana while he was a prisoner of war were not binding on the government of Mexico, and 2) that the legal boundaries of the Republic did not extend below the Nueces.

g. Of course Mexico would not and did not sell said belt for the sum of five millions of dollars, or at all.

h. Then, in 1842, the Congress of the Republic enacted the act defining the boundaries of the Republic of Texas to include the two Californias, the whole of the states of Chihuahua and Sonora and the territory of New Mexico, and parts of Tamaulipas, Coahuila, Du-

rango and Sinola. President Houston vetoed the bill. However, Congress passed the bill over the President's veto. (Wortham's History of Texas, Vol. IV, pp. 92-93.)

These are a few of the facts which indubitably refute the contention made by President Polk and also by the courts below that the Republic of Texas always claimed the Rio Grande was her western boundary, in fact they conclusively show that the Republic was not sincere in its claims under the act of December 19, 1836.

It is hard to believe that the Republic would have instructed Bee to purchase the belt from Mexico for a sum not to exceed five million dollars if it had had the least semblance of a legal claim to it.

18. Another point worthy of note is that President Tyler, who expended considerable time and energy to negotiate a treaty with the Republic of Texas for its annexation, recognized the fact that the boundary of the Republic was undefined and a matter of dispute between the Republic and the United States of Mexico, because in his Fourth Annual Message (Dec. 3, 1844) speaking on this question he said:

"Mexico requires a permanent boundary between that young Republic and herself. Texas at no distant day, if she continues separate and detached from the United States, will inevitably seek to consolidate her strength by adding to her domain the contiguous Provinces of Mexico. The spirit of revolt from the control of the Central Government has heretofore manifested itself in some of these Provinces, and it is fair to infer

that they would be inclined to take the first favorable opportunity to proclaim their independence and to form close alliances with Texas. The war would thus be endless, or if cessations of hostilities should occur they would only endure for a season. The interests of Mexico, therefore, could in nothing be better consulted than in a peace with her neighbors which would result in the establishment of a permanent boundary. Upon the ratification of the treaty the Executive was prepared to treat with her on the most liberal basis. Hence the boundaries of Texas were left undefined by the treaty.

19. It should be noted that the Map attached to the trial court's opinion was made in 1844, and it merely evidences the claim Tyler and Polk at that time hoped to make certain by treaty or war.

20. In all probability, these well known facts were instrumental in causing the Congress of the United States to couch its consent for the annexation of Texas in the language that it did. It must be remembered that the Congress of the United States by its joint resolution of January 25th, 1845 consented that "the territory properly included within and rightfully belonging to, the Republic of Texas, may be created into a new State, to be called the State of Texas, etc." Said resolution also contained a proviso that the Government had the power to adjust all questions of boundary that may arise with other governments.

Our Government must have known that the only claim that the Republic had to that part of Tamaulipas below the Nueces was its bold assertion so made by the act of December 19, 1836.



Besides the record shows that President Polk sent John Slidell to Mexico City with full power to "negotiate" for the Nueces strip.

The courts below contended that by the treaty made with Santa Ana in May, 1836, he recognized the Rio Grande as the boundary of the Republic of Texas.

Neither Santa Ana nor Houston so understood that to be the meaning of the Treaty.

It is true the treaty contained an article which reads: "The Mexican troops will evacuate the territory of Texas, passing to the other side of the Rio Grande del Norte."

In a letter from Santa Ana to Houston in November, 1836, he offered his services in settling the boundary question between Texas and Mexico "at the Nueces del Norte, or any other boundary, as may be decided on." (Wortham, Vol. III, pp. 376,377).

In fact, Houston ordered Santa Ana to move the Mexico troops below the Rio Grande and as far south as Monterrey. (See Houston's Letter to Santa Ana, Yoakum's History of Texas, Vol. II, p. 550).

21. Mexico recognized the Republic of Texas, as an independent nation with its boundaries extending to the Nueces and east line of New Mexico. This fact is evidenced by the following:

When General Taylor was encamped on the upper bank of the Rio Grande, opposite Matamoros, General Ampudia, then in command of the Mexican forces

stationed at Matamoras, notified General Taylor to break up his camp within twenty-four hours and to retire beyond the Nueces river, and in the event of his failure to comply with these demands, announced that arms, and arms alone must decide the question.

In a clash between General Taylor's forces and those of General Arista, who had succeeded to the command of the Mexican forces, in a region near the present site of Brownsville, the American forces were defeated, and based upon such clash, President Polk induced Congress to and it did declare war on Mexico, which war continued until concluded by the treaty of Guadalupe Hidalgo.

### Lincoln Speaks on the Subject

22. It is well at this point to note the observations made by A. Lincoln while he was a member of the Congress of the United States. On January 12, 1848 he declared in Congress that "the war with Mexico was unnecessarily and unconstitutionally commenced by the President." He spoke of his impressions of how he and others believed they ought to behave while their country was engaged in a war they considered unjustly commenced. "When the war began, it was my opinion that all those who because of knowing too little, or because of knowing too much, could not conscientiously oppose the conduct of the President in the beginning of it should nevertheless, as good citizens and patriots, remain silent on that point, at least until the war should be ended." Now he was forced to break silence; the President was telling the country, continually, that votes of the Whigs for supplies to the soldiers in the field were an endorsement of the President's conduct of the war. Then, too, the President was hold-

ing back documents and information to which the public was entitled.

Lincoln had earlier introduced resolutions and demands that the President should locate the exact "spot" where the war began. He now accused the President of marching an American army out of the proven American territory into land not established as American soil, and there shedding the first blood of the war. The President was attempting "to prove by telling the truth what he could not prove by telling the whole truth." (Extract from Sanburg's Abraham Lincoln, Volume One and Two, Chapter 75, pp. 366, 367).

23. In furtherance of his plan, Polk appointed Trist as a commissioner, with full powers, etc., to accompany the army into the interior of Mexico and negotiate a peace treaty by which certain territory, including a part of the State of Tamaulipas, would be ceded to the United States.

This situation is expressed in correspondence between Mr. Trist and the President, wherein he, speaking of certain insurmountable difficulties, remarked:

"The States of Sonora and Chihuahua, which adjoin New Mexico, had solemnly protested against the transfer of a single foot of their territory, and against the validity of any such grant, if made.

"This was, therefore, a sine qua non with the Mexican Government; and one which it was absolutely impossible that it could depart from, even if it was ever so strongly disposed to do so; because it would have rendered the ratification of the treaty an impossible thing. Not only would the delegations from those States

have opposed it, but it could not have obtained a single vote in its favor. If there be, in this country one sentiment more universal and decided than any other (and this without special reference to our country, and the designed imputed to her) it is the one which denies the possibility of a valid transfer by the General Government, of any portion of the territory of one of the Sovereign States. It is set forth with great clearness by the Puros (or war-until-annexation party) in the Manifesto referred to in my Dispatch of the 26th December, as constituting 'the last stand made by them, in the character of members of the expiring Constituent Congress, against the consummation of the measure (a Treaty of Peace) upon which the government is known to them, and to everyone, to be intent'. Nor does it avail to urge against this denial of authority in the Genl. Government, the supreme law of necessity; for it is fortified at this point also. It says, if the Union, after having exhausted all its means in the defense of its members, finds itself incapable, let the portion of the Republic, with respect to which the impossibility of defense exists, be abandoned for the time. But this inability gives no right to the Union to alienate any portion of any State; whether it be for the purpose of purchasing peace for the rest, or any other purpose whatever. No such alienation can be valid.

"Thus insurmountable was the obstacle to the adoption of the parallel of 32 deg. as the boundary. The only particular, in respect to which it was practicable to overstep, this limitation to the transfer of territory, is the small portion of the State of Tamaulipas, lying North of the Rio Bravo, and running a short distance up that river; which strip of country (extending either to the Nueces or as far as San Antonio—I do not

recollect which, and have not the reference at hand) just as certainly constituted a part of that State, and not of Texas, at the time when the latter declared her independence, as it is certain that the counties of Accomack and Northampton do now constitute a part of the State of Virginia and not Maryland. Tamaulipas, however, has not made any protest on the subject; and it is believed that the boundary will be silently acquiesced in by her, and that in view of the extreme peculiarity of the case under every aspect, this departure from the principle will not be made a point of by them in favour of peace." (Miller, Treaties, Vol. V, p. 305).

It is obvious that Mr. Trist and the Mexican Commissioners agreed upon all of the territory to be ceded to the United States except the territory lying between the Nueces River and the Rio Grande. This is clearly shown by the following correspondence between the plenipotentiaries of Mexico and Mr. Trist, the commissioner for the United States: Under date, August 29th, 1847, the Mexican government in its instructions to the commissioners appointed to negotiate a treaty with the United States Commissioner, N. P. Trist, and in which we find the following language: "It is supposed they know that if greater advantage cannot be drawn from the territory of Texas, they must adopt the opinion of the government, who believe that no further concession shall be made than the limits of Texas, and in no manner does its limits reach to the river Bravo," which means the Rio Grande. (See Public Pamphlets, Vol. 2, p. 331).

And in a note addressed by said Commissioners to Mr. Trist, dated September 6, 1847, we find the following more emphatic language:

"In our conference we have informed your excellency that Mexico cannot cede the belt which lies between the left bank of the Bravo and the right of the Nueces. The reason ascertained for this is not alone the full certainty that such territory never belonged to the state of Texas, nor is it founded on the great value in the abstract, which is placed upon it. It is because that belt, together with the Bravo, forms the natural barrier for Mexico, both in a military and commercial sense, and the barrier of no state ought to be sought, and no state can consent to abandon its barrier. But in order to remove all cause for trouble hereafter, the government of Mexico engages not to found new settlements or establish colonies in the space between the two rivers, so that, remaining in its present uninhabited condition, it may serve as a safeguard equally to both republics. Pursuant to our instructions, the preservation of this territory is a condition, *sine qua non*, of peace."

24. Bear in mind that the trial Court held that said territory was not "ceded" territory, and based such holding on 1) the act of December 19, 1836, which act was repudiated both by the Legislature of Texas and the Supreme Court of Texas, as well as by this Court. We refer the Court to *Clerk v. Hiles* in which the court stated that said act "was not considered a matter of sufficient importance to deserve attention," and 2) on the Treaties with Santa Ana (while in du-rance vile), and which even the Congress of the Republic attached no importance, and 3) on the case of *McKinney v. Saviego* (The head note of which states that the treaty does not apply to any part of Texas) but the opinion reads: "We think it clear that it (Art. VIII) did not refer to any portion of the acknowledged



limits of Texas." Which clearly shows that there was an unacknowledged portion of Texas.

We respectfully refer the Court to our list of authorities cited at page 18 et-seq. of our supporting brief.

### Compromise Agreement of 1850

If Texas did not get sovereignty over said territory by said Compromise Agreement of 1850, then it has no sovereignty over said territory. Let us look at the facts.

When President Polk was wooing Texans his contention was that the boundary of Texas extended to the Rio Grande from its mouth to its sources, but when the treaty was concluded and he had accomplished his purpose, he and his successor, President Taylor repudiated that statement and contended that all that part of New Mexico lying east of the Rio Grande was "never a part of Texas but was "conquered" territory.

Notwithstanding this fact the Texas administration created counties (on paper) in said eastern part of New Mexico, and attempted to organize courts in that territory, but the American forces at Santa Fe thwarted this attempt, which caused bitter feeling in Texas and threats of war against the United States.

Mr. Wortham, the historian, in reporting on this incongruous situation summed up the situation in these words:

" . . . to contend that it was not Texas soil at the moment of annexation would be to condemn President Taylor himself and the American Government. It would be to contend that

Taylor's march from the Nueces to the Rio Grande was an invasion of Mexican territory and thus justify the action of the Mexicans in attacking him . . . " (Wortham, *A History of Texas*, Vol. IV, p. 219 et-seq.)

In the meantime another complication arose. In early 1850 a mass meeting was called to convene in Brownsville, Texas, to, and it did convene for the purpose of and it did prepare a petition to the Congress of the United States to make either a state or a territory out of that part of the state of Texas lying between the Nueces river and Rio Grande, as said treaty provided. But no further steps were taken as the controversy between Texas and the United States was settled on September 9, 1850 by said Compromise Agreement, whereby Texas became sovereign of the territory between the Nueces river and Rio Grande. (See *State v. Saenz*, 47 Texas 307).

### Respondents' Authorities Analyzed

Great stress is laid by respondents on *Todock v. Union State Bank* (Their brief pp. 10-11), which simply holds that, notwithstanding the treaty with Norway, Knudson, an alien, could not come into Nebraska and acquire a homestead without complying with the state's homestead law. Suppose a Mexican alien of the class mentioned in Article VIII should come into Texas and purchase land, he would necessarily be subservient to Texas' land laws, and said treaty stipulatio would be no protection against such.

Then at page 11 they say "This Court has held that laches may bar rights guaranteed by a treaty." But the doctrine of laches is inapplicable to a legal title,

and the treaty there considered had no clause similar to said Article VIII.

It should be observed that only a Mexican can invoke the said stipulation, and several of the cases cited are by persons of other nationality.

At page 12 they assert that these (Texas' statutes of limitation) were regulations which the conquering authority ordained, making it thereby appear that Texas conducted the war ~~with the United States~~.

It is fundamental that neither the Congress of the United States nor the Legislature of Texas could take away or invalidate an existing title. (Baldwin v. Goldfrank, Sup. Ct. of Texas, 31 S. W. 1064; State v. Saenz, 47 Texas 307, construing acts of Texas' Legislature of 1850, 1852, 1854, 1860 and 1870 and stated that their object

"... was to ascertain what lands belonged to individuals, whether the titles from the former government were perfect or imperfect, and to have them surveyed, mapped and patented,, but not to interfere with any superior rights that might have been acquired by third persons previous to the passage of the laws ..

"A claimant may rely on the validity of his title under the laws of the State, including the treaty of Guadalupe Hidalgo, which is binding as a law, without availing himself of the benefit of a suit under this law . . . "

In McKinney v. Saviego (Our supporting brief p. 36) this Court with elaborate detail pictured the sit-

uation of alien Mexicans under Texas' law at time of the treaty.

It is not uncommon for a treaty to allow non-resident aliens privileges in regard to real property, which are denied them under a law of the state where such property is located. (Under Point E, p. 41 of our supporting brief we have discussed this question, with authorities sustaining that assertion.

**[REDACTED]**

This suit is one of the most important that has ever arisen in the United States. The title to millions of acres of land situated in the vast territory ceded by Mexico to the United States by the treaty of Guadalupe Hidalgo, and claimed under grants from Spain or Mexico, rests upon the decision of this Honorable Court in this case, and if such is contrary to petitioners contention, the action of Arbitrators, if arbitration is resorted to under the express stipulations of Article XXI of said treaty to the effect that if a controversy arises as to the meaning of any stipulation in said treaty, such controversy shall not result in reprisals on that account, but may be, at the request of either government, submitted to arbitration by Commissioners or friendly nations, etc.

Wherefore, petitioners most respectfully pray that on rehearing this Honorable Court set aside its denial of the petition for certiorari; that it grant its writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit as prayed for in said petition for certiorari; and upon such hearing that the judgment below be reversed and judgment be here entered in favor of petitioners for the title and possession of the land sued for by them, with instructions to the trial

court to take an account of the rents and profits of said land, or in the alternative that the judgment below be reversed and the cause be remanded with instructions, and petitioners pray for their costs.

Respectfully submitted,

D. B. CHAPIN,  
P. O. Box 256,  
Mission, Texas  
Attorney for Petitioners

ELLERY GARLAND BROWN,  
Corpus Christi, Texas

LEWIS B. PERKINS,  
Washington, D. C.  
Counsel for Petitioners

I, D. B. Chapin, attorney for petitioners, certify that in my opinion the foregoing Motion for Rehearing is well founded in law and that the same is proper to be presented and filed, and is not interposed for delay.

D. B. CHAPIN,  
Attorney for Petitioners

A true copy of above motion has been delivered to counsel for the respondents.

D. B. CHAPIN,